

**TESTIMONY OF**

**ATTORNEY GENERAL JOHN ASCROFT**

**U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING**

**CONGRESSIONAL OVERSIGHT OF THE DEPARTMENT OF JUSTICE**

**JUNE 6, 2001**

REP. SENSENBRENNER: (Sounds gavel.) The committee will be in order. Today the committee will conduct an oversight hearing on the United States Department of Justice. Recently, our Crime, Immigration & Claims, and Commercial & Administrative Law Subcommittees held similar hearings focusing on the Justice Department's budget request for 2002. Today's hearing will build upon the subcommittee hearings and open our first dialogue with our new Attorney General John Ashcroft.

I am pleased that many of the president's initiatives contained in his proposed budget for the Justice Department. Some of those include new funding for the Immigration and Naturalization Service to help secure our borders; new funding for the FBI to combat terrorism and cybercrime; and new funding for the DEA to improve its efforts to fight the scourge of drugs and violence.

Notwithstanding these priorities, I support the administration's decision to take a breather from the hefty budget increases that the department has received in the last decade. The DOJ's budget has dramatically increased from \$11 billion in fiscal year 1993 to more than \$21 billion this year. It's not clear that the department management resources have been able to keep up with the explosive funding increases.

It is my intention to conduct vigorous oversight of the department to ensure that the funds are properly spent, that individuals responsible for managing the department and its programs achieve appropriate measurable results, and that the department's mission is not impeded by outdated or inadequate technology.

I am concerned that the department, which is a respected and revered institution, has lost its way. Like the slugger who has lost his swing, I think it is time for this new administration to focus upon fundamentals. If the department can't get the basics right, the American people will inevitably lose confidence in it, one of our most trusted institutions.

Though the FBI may be the most capable law enforcement on the planet, recent disclosures about troubles at the FBI have raised serious concerns. The McVeigh debacle, the Hanssen spy case, and corruption in the Boston office and other issues indicate that there are numerous personnel, management, and systems challenges that face the Bureau. It is time to focus on fundamentals at the FBI, and today we will ask how these fundamentals will be improved.

I want to make it clear that I respect and admire the men and women of the FBI. Most of them are the cream of the crop, and this nation is safer because they are on the job.

The FBI has had many great successes, but its recent failures beg for reform. The Congress and the administration should directly address these issues to make the greatest investigative agency in the world even better.

Our focus should not be on the FBI alone. One of the most dysfunctional agencies in all of government is the Immigration and Nationalization Service. They are often slow, ineffective, and wasteful. One can't digest all the inspector general and General Accounting Office reports on the problems that plague the INS. This nation is challenged by the flood of illegal immigrants, and we don't properly serve legal immigrants. Too often the INS is part of the problem, and hopefully we will start to hear about the solutions.

Speaking of fundamentals, I am concerned that while we have drastically increased spending on some dubious grant programs, over the last decade we have neglected some basic federal law enforcement assets and resources. For example, the FBI can't even send e-mail across the street to folks at main Justice. We are told that some attorneys at the Justice Department are working on old 286 and 386 computers that crash almost as much as they're up and running. Many DOJ computers still use 28.8 baud modems that connect to various DOJ databases. Often our federal law enforcement officers are losing (sic) less sophisticated equipment than the modern-day criminal. It's time to address these deficiencies and to bring important assets into the 21st century.

I am also concerned about the Criminal Division. It has become a policy and managerial body and is no longer conducting cutting-edge litigation division. This administration must make a decision. Is the

Criminal Division going to be a bureaucratic paper-shuffling shop, or will it focus on hard-nosed litigation and prosecutions? If the former, we should cut staff and ship them out in the field, where they're needed.

These are some of the many issues Attorney General Ashcroft and his new team must make. It is a daunting and criminal -- excuse me -- a daunting and critical task. We wish you all the best, and we look forward to working with you to ensure that the Justice Department and all of its components reach their full potential. The American people deserve no less.

And I now yield to the gentleman from Michigan, Mr. Conyers, for his opening statement.

REP. JOHN CONYERS (D-MI): Thank you, Chairman Sensenbrenner. Good afternoon, Attorney General Ashcroft. I want to thank you for being here today and for the outreach that you have undertaken this year. I personally appreciate your consistent efforts to maintain a dialogue with Democrats.

Now, in the most respectful terms possible, I must tell you that at this early stage of your tenure that some of the actions of the department have been very troubling to me, and run counter to your confirmation hearing representations that you would enforce the law and run a department free from politics.

First of all, I hope -- and I've mentioned this to you before at the Department of Justice -- I hope you can find it in your heart and, if you need to, to pray over your relationship with Ronnie white. I have been very troubled with that relationship, and I hope that -- that you'll keep reexamining it.

Elected officials, like everyone else in this country, deserve to be tried in the courts and not in the press, and I am sorry to say that when it comes to Senator Robert Torricelli, your Justice Department has been leaking like Niagara Falls. This public flogging of that senator appears to have increased considerably within the 48 hours of Senator Jeffords' party switch, and created an impression, true or false, that this White House and the Justice Department intended to use the criminal processes to perhaps retake the United States Senate.

Now, there is one way that you can help relieve that impression, or misimpression, and that is to follow the precedent established by your predecessor, the Republican Attorney General Dick Thornburgh, in the first Bush administration. When the department leaked damaging information and innuendo on a member of this House, he conducted a thorough investigation and, using polygraph examinations, ultimately discovered the source of these leaks and relieved that person of those duties.

Now, this becomes especially important, given the fact that you have previously commented on the Torricelli matter in an earlier fund-raising letter of yours, using the unfortunate word "corruption" in connection with that senator, that you sent out last year.

Anything less than a duplication of the Thornburgh investigation will simply reinforce the perception, true or false, that the department is using the criminal justice system to politicize in an area that it has absolutely no business to be doing it. And so I call on you today to conduct such an independent investigation, and hope that you would address these matters as you choose in your comments this afternoon.

I'm also extremely troubled by a letter that you wrote to James J. Baker of the National Rifle Association. And in that letter, you indicated that you believe in an individual, as opposed to a collective, right to bear arms. And in doing so, you appeared to breathe life into a Texas judge's extreme and activist and lonely ruling that the Brady Law's prohibition on wife beaters having guns is unconstitutional under the Second Amendment.

We need to know whether this means that you believe the Brady Act and assault weapons bans are unconstitutional and whether the department will now take that position in the Texas Emerson case.

I'm finally troubled by the daily prayer sessions that you lead at your federal public office; not the ones that we as members, when we have breakfast with you, engage in a prayer that you lead with us, but I'm talking about the ones that are open that you invite everybody in the department to come in and join you at. And I wonder whether you have the sensitivity to understand what this may be doing.

I'm glad that you pray. I do, too. But the way you conduct your prayer sessions in your office creates an atmosphere where people feel that they may be ostracized if they don't participate. Where there's an unspoken rule that compatibility with their boss depends on their participating in his faith, this could, sir, create lots of problems and lots of confusion among the thousands of people that work for you at the Department of Justice.

Can't you see how some people would feel as a result, that they might have to choose between their job and faith?

In your confirmation hearings you said, quote, "The attorney general must lead a professional, nonpartisan Justice Department that is uncompromisingly fair, defined by integrity, and dedicated to upholding the rule of law." Well, I can only hope today that we can discuss to what extent these actions I have described live up to those ideals.

And I thank you, Mr. Chairman.

REP. SENSENBRENNER: General Ashcroft, would you please rise and take the oath?

(Witness is sworn in.)

Without objection, the attorney general's full statement will be included in the record. And General Ashcroft, please proceed as you will.

ATTY GEN. ASHCROFT: Mr. Chairman, I want to thank you. It is both an honor and a privilege to appear before you and before this committee to discuss the programs and activities of the Justice Department. As a former member of the Judiciary Committee in the other house, I always am pleased to see authorizers seeking to be a part of and establishing the purposes for which the department is authorized.

It's been over 20 years since the last comprehensive authorization for the Department of Justice was enacted. To put that in perspective, 20 years ago I was attorney general of the state of Missouri; today I'm attorney general of the United States. I appreciate your efforts. Progress can take time, but it is possible, and I am grateful for your energy and your purpose here.

The responsibility for the United States system of justice is nothing less than the responsibility for freedom. And to carry the weight of such a responsibility is a rare privilege in the history of human affairs. The United States Department of Justice today is dedicated to a single proposition: the energetic enforcement of the rule of law, including protecting the civil rights of all Americans.

Over the past several weeks, I've had the privilege of meeting informally over coffee and orange juice with many of you to listen to your concerns, to discuss advancing the course of justice. So far, I think I've met with about half of you, and I look forward to meeting with the remaining members in the next several weeks. I've been pleased to find that many of the priorities that you've expressed are very closely related to the priorities which I believe this administration is pursuing. We share a respect for the rule of law and the defense of people and property that the rule of law demands. And we share a respect for the enforcement of civil rights and the cultivation of human potential that such respect permits.

As attorney general, I've had no higher priority than protecting the civil rights of all Americans. When racial unrest erupted in Cincinnati last month, the Department of Justice responded immediately, working with the mayor and other community leaders to help restore calm; calm on the streets of Cincinnati and elsewhere. Our message, echoed in everything that we do at the department, is that government judging its citizens on the basis of their race is wrong and must not stand.

The president has asked me to assess the extent and nature of one form of discrimination, racial

profiling, and to report back to him with my recommendations. To make good on our commitment to improve the just and equal administration of our nation's laws, our 2002 budget increases funding for civil rights enforcement to over \$100 million.

But dollars tell only a small part of the story. Because voting rights are also a critical civil rights, we've sent monitors to elections in St. Louis and federal observers to Cicero, Illinois to ensure that the right to vote and to preserve the integrity of the voting process -- those objectives are guarded. Just yesterday, we dispatched six observers to monitor municipal elections in Mississippi under the Voting Rights Act. In addition, we carefully are monitoring both state and federal election reform initiatives.

We're working to help small businesses better accommodate persons with disabilities under the president's new Freedom Initiative.

And we're stepping up prosecution of those who traffic in human beings, those who would not only traffic in them but exploit them for their labor, particularly those who bring the approximately 50,000 women and children into the United States each year.

Another issue that has frequently come up in my conversations with many of you is immigration reform. The president's budget requests an additional \$240 million to beef-up INS enforcement activity and to help local prosecutors. The administration will also propose splitting the mission of the INS in two with separate chains of command reporting to a single policy official. I support splitting the agency in two as a way to draw a bright line between the need to deter illegal immigration and the ability to assure the millions of legal immigrants and new citizens the smooth and orderly service they deserve. I look forward to working with members of this committee as this proposal is advanced.

Looking ahead, the priorities of the Justice Department will continue to be dictated by our commitment to first principles. Gun violence, violence against women, and drug crime all threaten to deny the most fundamental right of our citizens, the right to personal safety. There is no question that we need a renewed commitment to the vigorous enforcement of existing laws addressing gun violence. The recent incidents in our schools highlight the need for the collaboration among federal, state and local law enforcement agencies to combat juvenile gun violence.

We've already taken steps to accomplish this by devoting increased resources to prosecutions, developing these collaborative approaches, and by working to ensure that child safety locks are available for every handgun in America.

And to those who despair of fighting to reduce illegal drug use, I have a very simple message today. I don't share the pessimism. The Department of Justice is committed to a vigorous, sustained effort to reduce drug abuse. Our kids are too important for us to accept defeat when it comes to drugs.

Finally, I'd like to say a word about a critical need that underlies all of these efforts: protecting and promoting the integrity of our system of justice. As you know, Attorney General Reno undertook a review last year of the Clinton administration's enforcement of the federal death penalty. Her review of nearly 700 capital cases found that there is no evidence of any racial or ethnic bias in the Justice Department's decisionmaking process in federal death penalty cases.

Since my arrival at the department, we have undertaken an additional study of the administration of the federal death penalty. We conducted an analysis of the original 700 cases and approximately 250 additional capital cases that were never submitted to Attorney General Reno's original review. Looking at these 950 cases, we evaluated federal enforcement policies and practices to determine whether there was any evidence of bias in the system and what types of capital cases fell within federal jurisdiction.

Later today, the department will be releasing our full analysis of the Department of Justice's enforcement of the death penalty over the past several years. Our conclusion is, as the Reno study concluded, that there is no evidence of racial bias in the administration of the federal death penalty. The Reno study concluded, and our analysis has confirmed, that black and Hispanic defendants were less likely at each stage of the department's review process to be subjected to the death penalty than white defendants.

In other words, United States attorneys recommend the death penalty in smaller proportions in the submitted cases involving black or Hispanic defendants than in those involving white defendants. The Attorney General's Capital Case Review Committee likewise recommended the death penalty in smaller proportions of the submitted cases involving black or Hispanic defendants than in those cases involving white defendants.

And the attorney general made a decision to seek the death penalty -- because ultimately these decisions are made by the attorney general -- the attorney general made a decision to seek the death penalty in smaller proportions of the submitted cases involving black or Hispanic defendants than in those cases involving white defendants.

In the cases considered by Attorney General Reno, she decided to seek the death penalty for 38 percent of the white defendants, 25 percent of the black defendants, and 20 percent of the Hispanic defendants. The finding that the death penalty was sought at lower rates for black and Hispanic defendants than for white defendants held true, both in intraracial cases involving defendants and victims of the same race and ethnicity, and in interracial cases, involving defendants and victims of different races or ethnicities.

The full details of this study will be available later today.

In addition to looking at statistics regarding race, today's study also examines and explains why the federal government's interests in punishing certain types of murders, such as those committed by drug kingpins, federal prisoners, or terrorists, result in a pool of criminal defendants being charged and tried in the federal system. It is this category of murders that you in Congress have identified as being grievous enough to warrant the death sentence, and it is the department's responsibility to protect those federal interests, as expressed in the law enacted by Congress, signed by the president.

I'm also announcing today some important revisions to the department's death penalty protocols. Attorney General Reno instituted a series of protocols designed to ensure consistency in the treatment of death-eligible cases, and I have operated under the same protocols since I became the attorney general. Under these protocols, in all cases charged as death-eligible cases, the relevant United States attorney makes a recommendation to the department. The case is then reviewed by a committee of career attorneys, who seek input from both the U.S. attorney and defense counsel. The committee evaluates the facts of the case, the federal interest in the case, the likelihood of success, and the aggravating and mitigating factors that Congress has identified as relevant in such cases. The committee then makes a recommendation to the attorney general. The case is then reviewed by attorneys in the deputy's office, in the attorney general's office, and then by the attorney general. The advantage of this approach is that a uniform, equal process governs, and ultimately one person reviews all cases nationally to ensure a consistent treatment based on the alleged conduct of the defendants, not other factors.

As I have already noted, both Ms. Reno's study and our own studies have concluded that there is no evidence of racial bias in the department's treatment of minorities in this system. We did note a slight statistical disparity in the treatment of plea agreements. This is the one component of the process that is not subject to subsequent review under the current protocols. A plea agreement can be entered into at the local level without a superintending review or analysis or evaluation at the Department of Justice.

I am announcing today that in order to have greater consistency in all aspects of the application of the federal death penalty, I am changing the protocols to require prior approval by the attorney general before a capital charge may be dropped in the context of a plea agreement. I am also directing United States attorneys to report all potential death-eligible cases to the department, so that our data will be more complete.

In addition, to conserve the expenditure of both government and defense resources, I am simplifying the procedure for reviewing cases in which the U.S. attorney is not recommending the death penalty. This will allow more attention to be given to cases where the death penalty is being pursued.

It is my hope and expectation that this new protocol will strengthen our ability to fairly and impartially administer the federal death penalty.

I am pleased with the studies that the department has done. Attorneys in both the last administration and in this one have worked hard evaluating these cases and have come to a conclusion that there is no racial basis in the way we are administering the death penalty in the federal system. I am confident that, like my predecessor, Ms. Reno, that this is the appropriate conclusion.

I also share her view that there is no question about the guilt of any of the 21 individuals currently on death row in the federal system. They have committed grievous crimes that the people of America, through you, their elected representatives, have determined warrant the death penalty. It is my responsibility to enforce those laws and to administer that penalty.

Still, public confidence is an essential component of the administration of justice. Accordingly, in order to assure public confidence and guarantee that our future efforts in the enforcement of the federal death penalty are consistent with the high standards of fairness that are required in charging, trying and sentencing those accused of federal death-eligible murders, I am directing today that the National Institute of Justice initiate a study of how death penalty cases are brought into the federal system.

I'm also directing the National Institute of Justice to study the effectiveness of federal, state and local law enforcement in the investigation and prosecution of murder in America, and whether there is sufficient accountability for murder, the most heinous of crimes. By understanding more about past practices in these areas, we may have an opportunity to improve our performance in the future.

And finally, the demands placed upon our Federal Bureau of Investigation have grown dramatically in response to the sophistication and globalization of crime. At the same time, legitimate concerns have been raised with regard to the management and administration of justice at the FBI. Two weeks ago, in testimony before an appropriations subcommittee of this House, FBI Director Louis Freeh announced a series of reforms to improve FBI recordkeeping and document management. These reforms are a necessary step in preserving the people's trust in our system of justice. We cannot, and I will not allow our FBI's reputation or the reputation of any of our law enforcement institutions to be tarnished. It is the responsibility of all of us to see that equal and impartial justice applies to all Americans, and this is a responsibility that I take seriously. And it's an honor each day to serve the nation in respect to this objective.

Mr. Chairman, I thank you for this opportunity and I look forward to responding to the questions of the members of this committee.

REP. SENSENBRENNER: Thank you very much, General.

Before we begin the questioning of the attorney general, I would like to make several housekeeping announcements. By my count, we have 145 minutes worth of questions if all of the members present at this hearing utilize their full five minutes. The attorney general has another engagement a little bit after 5:00 this afternoon. And dividing the time that is available into when the attorney general has to leave will require the chair to strictly enforce the five-minute rule. So everybody on both sides of the aisle should be on notice that when the red light goes on, we have to move on in order to allow everybody who is here to ask some questions.

Secondly, as the attorney general has mentioned in his statement, it has been over 20 years since the Department of Justice has been authorized by law. That is clearly unacceptable, and the committee will consider an authorization bill soon.

This bill will largely address budgetary, administrative and management issues. A draft bill has been circulated to the minority and to the department, and there has already been one bipartisan staff meeting on this legislation, and there undoubtedly will be more.

To facilitate the committee's understanding of the department's needs we will be submitting questions for the record in two groups. I would request that all members on both sides of the aisle submit to Mr. John Motts (sp), who is seated to my right, questions regarding the budgetary, administrative and management issues no later than the close of business tomorrow, Thursday, June 7th, 2001. We will ask the department to expedite its responses to those questions so that the committee may have the benefit of

the answers prior to the markup and the authorization bill. All other questions should be submitted to Mr. Motts (sp) no later than the close of business Monday, June 11th, 2001. I appreciate all members' attention to this request. Questions submitted after these deadlines will not be presented to the department, not included in the record.

This relatively quick time line is necessitated by the fact that we wish to be able to mark up an authorization bill and get this committee's oar in the water before the Appropriations Committee decides to do this work for us. So I would hope that the members would cooperate with the time deadlines.

And now I'll begin the questions by yielding myself five minutes.

General Ashcroft, I am delighted to hear of the administration's once again report that we do intend to receive legislation reorganizing the Immigration and Naturalization Service and that there will be a budget increase of approximately \$240 million to the INS, largely channeled toward better enforcement of our borders, which is something I support. However, I am concerned that the service function or the paperwork function in processing the petitions filed by those wishing to comply with our laws will be treated as a stepchild in terms of the budget for this reorganized agency. I have two questions. First, when can we expect to get the legislation splitting the INS in two, and second, what does the administration propose to do so that the INS has enough money to professionally and speedily deal with the petitions that it receives from those people who seek legalized status?

ATTY GEN. ASHCROFT: I'm not able to tell you an exact date upon which we would be prepared with a proposal. As a matter of fact, I think it would be appropriate for us to confer together about a proposal. The expertise of the members of this committee, particularly some that have invested themselves thoroughly over the course of decades in evaluating this, is an important component of a plan.

The president has clearly recognized the need to separate the functions, because I think there is a sense that those who are legitimately in the country and are awaiting processing and the change of their status are frequently at the end of a very long line. That's simply one of the problems. So I can pledge to work closely with you. We are hoping to have a new director of the INS who we would like to involve in helping report the participation of the agency in the development of the proposal for reform. And we are eager that his nomination be made complete and that his confirmation place him in a position to assist us with this understanding.

You know, the president has stated targets about moving the time for processing cases downward because he understands the very serious dislocations in the lives of individuals. But I cannot give you a specific date upon which we would provide legislation. We would like to do that in conjunction with those of you that have expertise here.

REP. SENSENBRENNER: What about the budget question; will there be an appropriate increase in the resources for the service end of the reorganized INS as well as in the enforcement end? I think you would find support on both sides of the aisle for more money for both.

ATTY GEN. ASHCROFT: Yeah. Well, the backlog is a major priority for the administration. We need to welcome in immigrants with something other than a big line. And this requires \$100 million in funding for the fiscal year 2002, with similar funding devoted to the effort in the year -- fiscal year 2003 through 2006. In FY 2002, a program enhancement of \$45 million is requested. This request, combined with the \$35 million in base funding and \$20 million in fees, would provide INS with the first installment of the five-year, \$500 million initiative to obtain a universal six-month processing standard for immigration applicants and petitions.

Frankly, that's a very ambitious aspiration, but it's the kind of aspiration that we ought to have. We have people who are simply being displaced in their lives unduly because of the delays now. So the funding request is made in the budget submission, and I believe it is important to have the separation in the agency so that, as a matter of fact, we don't have an inordinate devotion of resources to enforcement and an inadequate devotion of resources to service.

REP. SENSENBRENNER: My time has expired.



The gentleman from Michigan, Mr. Conyers.

REP. JOHN CONYERS (D-MI): Thank you, Mr. Chairman.

I am very sorry that you couldn't have sent up the death penalty study before you decided to come here and announce it. Not one Democrat on this committee has seen or heard anything about it. So this unilateral presentation, which doesn't include any data on state death penalty matters, where most of the executions take place -- and incidentally, I remind you that there is a constitutional question that the Department of Justice has, as *Furman v. Georgia* instructed us years ago. And so this unilateral presentation means nothing to me, nothing till we see it. It's an unfair way to present a matter as serious as the death penalty.

Now, I hope that you can think about your relationship with Ronnie White. That's a Department of Justice matter that the attorney general is responsible for.

Now, my next question to you is have you or any member of your staff ever discussed Senator Torricelli's case with anyone employed by the White House, a Republican senator, a Republican congressman, or his or her staff, or any employee of the Republican National Committee?

ATTY. GEN. ASHCROFT: Congressman, shortly after I became attorney general of the United States, I recused myself from any involvement in the Torricelli matter. The reasons for that, I think, are pretty well-understood. I served with the senator in the United States Senate. And, as a result, I don't have any responsibility as it relates to that matter. The matter is undertaken and conducted by a U.S. attorney who is a holdover from the previous administration, and any inquiries regarding that matter and any decisions regarding that matter will have to be reached and made by the --

REP. CONYERS: Mr. Attorney General, can you answer this question yes or no?

ATTY. GEN. ASHCROFT: Have I ever mentioned the Torricelli matter to anyone else? Yes. I just mentioned it to you here in the committee, and obviously I've mentioned it to people when I was a member of the Senate when the items have come up.

REP. CONYERS: Now, did you remember me asking you if you had any contact with anybody in the White House about this matter, or your staff having any contact with anyone in the White House about the matter?

ATTY. GEN. ASHCROFT: I do remember you asking me that.

REP. CONYERS: And what is your response?

ATTY. GEN. ASHCROFT: I don't know.

REP. CONYERS: You don't know. Can you find out?

ATTY. GEN. ASHCROFT: I don't know whether I can find out --

REP. CONYERS: You don't know if you can find out?

ATTY. GEN. ASHCROFT: That's correct, sir. I --

REP. CONYERS: Okay.

ATTY. GEN. ASHCROFT: You've asked --

REP. CONYERS: That's fine. That's -- that's all I need to know. Now, this is the May 27th New York Post article. "Torch is toast. Feds: We have enough evidence to indict New Jersey Senator Torricelli," dated Sunday, May 27th, 2001. Now, it quotes a Justice Department investigator saying, "We're going to indict

him soon." This appears, Mr. Attorney General, to violate Rule 6(e) of the Federal Rules of Criminal Procedure. Are you aware of that?

ATTY. GEN. ASHCROFT: Am I aware of Rule 6(e)?

REP. CONYERS: And will there be an investigation about this matter?

ATTY. GEN. ASHCROFT: I will direct any request for anything related to the matters you have indicated to those in the Justice Department whose responsibility it is to address these, in the light of my recusal, which took place shortly after I became attorney general.

REP. CONYERS: Boy, oh boy.

REP. SENSENBRENNER: The time of the gentleman has expired. The gentleman from Illinois, Mr. Hyde.

REP. HENRY HYDE (R-IL): Thank you, Mr. Chairman. I have no questions, I just want to congratulate General Ashcroft on becoming attorney general, and your very prudent selection of staff that I see behind you. (Laughter.)

Thank you.

REP. SENSENBRENNER: Well, I may quarrel with that, since that was mostly the staff that I inherited.

The gentleman from California, Mr. Issa.

REP. DARRELL E. ISSA (R-CA): Thank you, Mr. Chairman.

And thank you, General Ashcroft, for being here. As a former senator, and in my own role as somebody who once aspired to that, I assure you I will not take you through the confirmation process a second time here today.

The question I have really centers around much of what your presentation was, but maybe a different angle on it. The whole question of racial profiling, I think, is something that you have spearheaded from day one, and I know the president has shown a keen interest in really working on significant reform, and I want to thank you both for that.

But I want to lead you down a little different avenue than you may already be going down, and that has to do directly with my territory and with some life experiences that I have had and that others around me have had.

As you know, it is appropriate for the Border Patrol to have some leeway in their process. But excluding the border activities at the border, it would seem that it's unacceptable to use racial profiling to decide who to stop among citizens and non-citizens alike here in America, and I have two examples for you here today.

First of all, as you may know, I am an Arab American, so this one hits very close to home. February 12th, 1997, a report that came from the White House, signed by the president, is often called the Gore report, and it specifically is titled "Airline Safety" -- actually, "A Commission on Aviation Safety and Security," as I say, known as the Gore report. And it seems to have been the catalyst for this first event. A certain individual, whose name, Nabil Shurafa -- S-H-U-R-A- F-A -- 18 years old, high school student, going from -- on a Northwest Airlines flight to Cincinnati to conduct a rowing -- high school rowing national event, was pulled off, removed from the flight, his bags searched, and the only answer he was ever given -- now this is an American, son of a physician, on a domestic flight -- was that he fit a profile. This isn't an isolated incident.

The next example is probably more directly related to my district. My district has two checkpoints, each approximately 70 miles inland from the U.S.-Mexico border, along two major freeways, the I-5 and the I-15. This carries millions of passengers per year.

These checkpoints, although constitutional -- and have operated for many, many years -- are now routinely used in the process of racial profiling. This wouldn't be brought home as clearly as it has been if I myself hadn't been stopped and if both my Hispanic district manager and my Asian district manager didn't find themselves more routinely stopped than others. They're stopped because they fit a profile, a profile that does coincide with many of the most common illegal entrants to our country but also coincides with much of the demographics of Southern California and many of the people who I have worked with for years and who have worked for me in my company.

I know the president has asked you -- has sent a directive to begin checking on racial profiling in Departments of Treasury, Interior, and Justice.

And I would hope that that report would be the beginning of your investigation into ways to enforce our laws, including border-related laws, but at the same time respect that once someone is here, citizen or not, and is well inside our borders, they should enjoy the same constitutional rights of not being unreasonably detained simply because they fit a given name or given color of their skin.

And I would like to leave the remainder of the time for you to comment on any part of my question, because I think you deserve that opportunity.

ATTY GEN. ASHCROFT: Well, first of all, I thank you for bringing this matter into the attention of not just the Justice Department, for the American people. The checkpoints that are interior to the country do play a key role as a second line of defense and a deterrent to illegal immigration.

But you know, my view is that we need to find ways to avoid profiling, period, racial profiling. And some people might say, well, it's tougher to enforce the law. Well, it may be tougher to enforce the law, but we've got to respect people for who they are and what they are, not for their ethnic identity. And I believe that it's wrong to racially profile as a basis for law enforcement.

We will do what we ought to do and what is necessary to address the issue. Part of the studying that we are doing now is to study what's happening in the federal community. And you know the president has asked us, and asked you, to be involved in developing the right information about what's happening in the non-federal community. But we can take care of the federal community items first, and we'll work hard to do that. We need to be in a racially neutral environment for enforcing our laws, immigration and otherwise.

REP. SENSENBRENNER: The gentleman's time has expired.

REP. CONYERS: Mr. Chairman, can Mr. Frank go --

REP. SENSENBRENNER: The gentleman from Florida, Mr. Wexler.

REP. ROBERT WEXLER (D-FL): I would be happy to --

REP. No.

REP. WEXLER: Okay.

Mr. Attorney General, I, too, want to welcome you to the committee. And first I would like to express my sincere appreciation to you on the manner in which you have exercised your responsibility with respect to the McVeigh case. I think the delay and the confusion has created an enormous, tortuous degree of tension with respect to the families, but I think your conduct of the case in a cautious but forthright manner to achieve the finality of justice with respect to McVeigh is greatly appreciated by an overwhelming number of Americans, even those they may ultimately have questions with the death penalty itself.

If I could ask my question, however, on a different matter. I am privileged to represent Palm Beach and Broward Counties in the state of Florida. This week, through the final draft document as it has been

reported in the Washington Post and other news organizations, the United States Commission on Civil Rights has concluded, at least in that draft final document, that the conduct of the Florida 2000 presidential election was marked by, and I quote, "injustice, ineptitude and inefficiency."

I think the statistic that stands out that should quantify for all Americans the extent of that injustice and ineptitude is the fact that 54 percent of the votes -- 54 percent of the votes that were rejected during the Florida presidential election were cast by African American voters, even though African American voters only account for 11 percent of the votes in Florida.

So 54 percent of the discarded votes were African Americans, even though they're only 11 percent of the voting population.

It's my understanding that the commission chairperson, Mary Francis Barry (sp), will ask you as the attorney general to investigate whether the obstacles encountered by minority voters in the Florida 2000 presidential election constituted a violation of the 1965 Federal Voting Rights Act. And I was wondering if you could commit to the committee today on what actions you will take to follow the investigation of the United States Commission on Civil Rights.

ATTY GEN. ASHCROFT: Well, first of all, let me say that I think the right to vote is at the very core of who we are as a nation and as a people, and it is a right that endures -- inures to every American. And it's a matter of great concern to me and the Department of Justice that we provide every assistance to making sure that right is realizable by each citizen.

There were a number of allegations that were delivered to the Department of Justice at another time. And I believe it is public information that we have -- and I hope I'm not stating the wrong number. I am under oath, and I don't want -- so I'm going to try to speak carefully. I think we have 12 investigations that remain open at this time. So we are in the process of responding to allegations about the last election. I will be very pleased to get a copy of the report when it is released and to evaluate it. And I will pledge that the Department of Justice will cooperate to seek to enforce the law and to assess compliance with the law in accordance with its responsibilities to enforce the law and to require compliance with the law.

REP. WEXLER: Is the department investigating the process in which hundreds, actually thousands of people were purged from the voter registration lists in Florida?

ATTY GEN. ASHCROFT: I'm not at liberty to define the nature of the investigations of the 12 investigations that are underway.

REP. WEXLER: Well, would you agree that in general, then, that if there were allegations that people in any state were inappropriately purged from the voting registration rolls before a federal election and that then the United States Commission on Civil Rights found that to be a problem, that that should be an area in which a United States attorney general should investigate?

ATTY GEN. ASHCROFT: That would be a matter of great concern to me. And violating the law in that respect would certainly be a basis for and should prompt an attorney general to look into it.

REP. WEXLER: Thank you very much.

REP. SENSENBRENNER: The gentleman's time has expired.

The gentleman from Florida, Mr. Keller.

REP. RIC KELLER (R-FL): Good afternoon, General Ashcroft.

ATTY GEN. ASHCROFT: Good afternoon.

REP. KELLER: I, too, am from Florida. I think the election came out okay, myself. Let me begin by just saying that in my view, my humble opinion, I think you are about the single most qualified person ever to hold the position of attorney general in our history. And I very much appreciate your willingness to take on

this challenging job, first; and second, to come here before this committee and subject yourself to tough questions from little schmucks like me. So I appreciate your hard work.

ATTY GEN. ASHCROFT: (Chuckles.)

REP. KELLER: The first question has to do with cable television in federal prisons. Currently, federal prisoners, including violent criminals like Timothy McVeigh, enjoy perks like cable TV and HBO. The taxpayer money pays for the basic cable portion and the prisoners' canteen money pays for the HBO/Showtime portion. The source of this is the Federal Bureau of Prison's own website, bop.gov. I, personally, believe that this is a waste of taxpayer dollars, and I filed a bill called the No-Frills Prison Act to stop it.

My question to you is, would you review the Federal Bureau of Prisons rules and regulations on this matter to determine if using money for cable TV for these federal prisoners is an efficient use of taxpayer dollars?

ATTY GEN. ASHCROFT: Well, I thank you for your question. And I'm sensitive to the issues you raise. I would be always willing to review the expenditures of the Bureau of Prisons with a view toward assessing whether or not they achieve the objectives that we want to achieve in our prison system. And as a result, that would be true about whether or not we have the right opportunities for information and, quote, "entertainment." I don't think of our prisons as entertainment centers, and appreciate your remarks.

REP. KELLER: The second area I want to chat with you about, my final area, has to do with civil lawsuits brought by the Department of Justice against major employers, such as Microsoft, Wal-Mart.

A few days ago, May 25th, the New York Times reported that the United States government brought a landmark lawsuit against Wal-Mart. And essentially what happened is Wal-Mart is a retailer that sells exercise equipment; doesn't have anything to do with making it or manufacturing it or designing it. And evidently, the equipment was somehow defective. And the U.S. Consumer Safety Commission, through the Department of Justice, filed this landmark suit saying even the retailer -- this major employer -- should pay, as a result of these injuries, certain fines.

I'm concerned about this type of suit light of the fact the Department of Justice complains they don't even have the money to enforce criminal laws, and now they're bringing suits against major employers that provide hundreds of thousands of jobs.

I talked to the Wal-Mart folks and they said they found out about this through the press conference. They weren't even told about this before they heard it from a reporter.

And so my first question is, in the future, what policy, if any, will you establish to ensure that at least defendants find out about lawsuits from the Department of Justice rather than from a news reporter?

ATTY GEN. ASHCROFT: I thank you for bringing this matter into the arena of discussion. I find it what we want to do in the Justice Department is to help provide a context for justice in the culture. And we need to help people avoid injuries, but I think we need to cooperate, whenever we can, to do that. And to the extent possible, I think it's important for us to indicate to companies that we are displeased in some measure with their performance as it would relate to the legal requirements they have, and to do so in a way which allows them to be responsive.

And so I would look forward to providing information to individuals in advance of their finding out about matters like this from the news industry.

REP. KELLER: Well, this is kind of a precedent-setting suit. By the press release put out by the government, this is the first time, they brag, they've ever sued a retailer who didn't have anything to do with the manufacture of the product. And I'm wondering what process, if any, will you follow to ensure that these types of precedent-setting lawsuits against businesses are given the proper level of review and approval within the Justice Department before they're filed.

ATTY GEN. ASHCROFT: Well, I'd just have to indicate to you that the review of lawsuits filed by the Justice Department normally takes place under the direction and leadership of the assistant attorneys general, who are appointed by an administration. And to date we have some of those confirmed and in place by the United States Senate. And regrettably there are still a number of areas in our department that are not supervised by such individuals confirmed by the Senate as a result of presidential appointment.

REP. SENSENBRENNER: The gentleman's time has expired.

The gentleman from Massachusetts, Mr. Frank.

REP. BARNEY FRANK (D-MA): General, one of the most important things Bill Clinton did for human rights was to reverse a 40-year-old policy that said that if you were gay or lesbian you could not get a security clearance. He issued an executive order that changed that. And you and I have had a chance to discuss this some before, but I did think it was important to make it clear publicly.

When you testified at the confirmation hearing you said that you were unfamiliar with that particular issue, and you then did clarify it. And I'd like to ask you to do this now because it's very important for a lot of people. A security clearance doesn't just apply to people who work in the federal agencies that deal with security, but for private sector companies that work with them. And we've had a history of people being subjected to very intrusive questions. And I should know it.

I've checked with the intelligence people. We have no cases that I'm aware of where people betrayed the country because they were gay or lesbian. Indeed, as I've reviewed the major cases of espionage, the people who committed it were all heterosexual. I draw no inferences about heterosexuals based on that -- (laughter) -- I want to reassure people. But I just mention that as a fact.

So I would ask you, could you now reaffirm that the policy of the United States government will continue to be that sexual orientation will not be a reason for denying someone a security clearance?

ATTY GEN. ASHCROFT: Congressman Frank, during my confirmation hearings I did say as attorney general I would not make sexual orientation a matter to be considered in hiring or firing, and that I would continue the policy of the previous administration regarding the sexual orientation of all employees and potential employees. And I confirm the Department of Justice, the FBI and every other component of the department does not now discriminate on the basis of race, color, religion, sex, national origin, disability or sexual orientation. The sexual orientation of a candidate for employment is not a condition upon which weight is given in the Department of Justice or in any of its components.

REP. FRANK: Thank you, general. I'm not quite persuaded to apply for a position, but I am glad to hear that. (Laughter.) I would like to make is explicit, though, that that also includes security clearances, because a security clearance does cover not simply employees of the federal government, but people who would be the employee of an architectural or engineering or other firm dealing with DOE or DOD. So is that part of the policy also being continued?

ATTY GEN. ASHCROFT: (Pause.) There has been no change in policy. I have ordered none and have no intention of ordering any.

REP. FRANK: So that also -- so that sexual orientation will not be a reason for, absent some other complicating factor, to deny a security clearance.

ATTY GEN. ASHCROFT: The policy remains unchanged, and I have no intention and will not change it.

REP. FRANK: Right. And you do acknowledge that that is the policy. I mean, a "yes" would make a lot of people just feel better.

ATTY GEN. ASHCROFT: Yes. Yes.

REP. FRANK: Thank you, general. (Laughter.)

The next question has to do with immigration. You inherit a policy that's more, I think, the fault of the Congress of the United States or anybody else, but I hope we could collaborate in changing it.

We have people who are in prison, in effect, for the rest of their lives because we cannot deport them to a country that will accept them. That is, there are people, some of whom committed minor crimes, some of whom -- and I was discussing these yesterday with my colleague from Florida, Mr. Diaz-Balart -- some of the Marielitos, who, fleeing the oppression of Castro, because of some problem, cannot be sent back to Cuba, face lifetime imprisonment. That seems to me, of all the things we, the United States government, do, one of the least justifiable. And could you agree that we should be working together to find a way to release from lifetime detention people who have never committed a crime that remotely justifies that degree of detention and are imprisoned in large part because there's simply no country that will take them back?

ATTY GEN. ASHCROFT: I can. There -- and I'm grateful for your sensitivity to this. I think it's something that shocks the conscience of individuals. There are about 3,000 long-term detainees in INS, if I'm not mistaken. I hope I have the numbers right. And about -- a little less than 400 of them have committed no offense.

Now there is a process for INS to evaluate them in terms of whether they would stay in touch with INS if they were released. There's a release process. But very frankly -- no pun intended, Congressman Frank -- I would be -- I would welcome the opportunity to work on this.

REP. FRANK: Thank you. Thank you. Mr. Chairman. I will look to work with you.

Last point -- and you won't have time to answer -- but the Justice Department, through the FBI, was forced to admit that an agent of this government, an FBI agent, misled a federal court in a way that led to the harsh incarceration of Wen Ho Lee. Now that's acknowledged -- that an FBI gave false testimony. We don't know whether it was his fault or somebody else had misled him.

I twice wrote to Mr. Freeh and was disappointed, frankly, to get a kind of a runaround. There needs to be some accountability for this explicit and acknowledged misrepresentation regarding Wen Ho Lee. The FBI is in total control of the facts. It happened well over a year ago. And I hope you will direct the FBI to in fact deal with this, because it is very important.

ATTY GEN. ASHCROFT: Thank you.

REP. SENSENBRENNER: The gentleman from Texas, Mr. Smith.

REP. LAMAR SMITH (R-TX): Thank you, Mr. Chairman. Thank you, Mr. Chairman.

Mr. Attorney General, I'd like to use my first question to try to dispel a myth, and it is this: To the best of your knowledge, isn't it true that a nonviolent, first-time drug offender who has been apprehended with a very small quantity of drugs simply never goes to prison? The myth is that a lot of people are in prison today who are first-time offenders with small quantities.

(Off-mike cross talk.)

ATTY GEN. ASHCROFT: I tend to, while under oath, hesitate to make sweeping generalizations that they never go to prison --

REP. L. SMITH: Why don't we say as a rule --

ATTY GEN. ASHCROFT: So I would say it would be rare --

REP. L. SMITH: Yeah.

ATTY GEN. ASHCROFT: -- at least in a lot of jurisdictions, for the first offender in these settings to do prison time.

REP. L. SMITH: So it would be rare. It would be the exception, certainly, not the --

ATTY GEN. ASHCROFT: Including the federal system.

REP. L. SMITH: Okay. Thank you.

Mr. Attorney General, the last administration made little or no effort to prosecute distributors of obscene materials. In fact, I'm not aware of a single case that was prosecuted. Does your department and is this administration going to have a different record from the last administration?

ATTY GEN. ASHCROFT: Well, I would indicate to you that I believe that the laws of this country are to be enforced. One of the -- my confirmation has been mentioned on several occasions here today, and one of the things -- the commitments that I was asked to make in my confirmation hearing was, would I enforce the laws of the land? I committed to do that. I think it's an honor and a privilege to do that, and I would expect to do that in regard to those laws and other laws --

REP. L. SMITH: And therefore --

ATTY GEN. ASHCROFT: -- because I don't believe it's the job of the attorney general to pick and choose.

REP. L. SMITH: Well, since the last administration had virtually no record, would you expect to have a better record?

ATTY GEN. ASHCROFT: I would hope.

REP. L. SMITH: (Chuckling.) Okay. Thanks.

My next question goes to what we might refer to as a federal Project Exile. Would you support a law that Congress would draft that would mandate jail time for anyone convicted of a crime who used a weapon in -- or possessed a weapon during the commission of that crime?

ATTY GEN. ASHCROFT: Well, as you well know, the Project Exile was based on the enforcement of a federal law that had those kinds of provisions in it. Whether it would be exactly the same as another proposed law to carry toward those objectives, obviously, it would remain to the details.

But it's my belief that when the federal government cooperates with state and local authorities to focus on gun crime, that we can reduce violent gun crime substantially in our culture.

The president has announced a Safe Neighborhoods Program which is designed to encourage U.S. attorneys in the Justice Department to work with local authorities to, first, partner with them, and then to plan strategically to isolate areas where there's lot of gun crime, and to find ways between the enforcement agencies -- state, federal and local -- to prosecute gun crime and to make sure that there is real time done. And thirdly, to communicate through the community that this is the policy so that it becomes understood by the various elements, including the criminal element, that if you do the crime, you're going to do time. And I think that's effective, and I support that concept. The president is allocating substantial resources to it in terms of the next budget.

And we need to reduce violent gun crime in the culture. The freedom to be free from injury in one's person as a result of the use of guns by criminals is a major freedom that is to be protected by the Justice Department.



REP. LAMAR SMITH: Mr. Ashcroft, I have two more questions. One is that you mentioned a while ago there was no racial bias in the federal death penalty cases. I am just curious, what's the explanation for the higher percentage of whites who are convicted versus minorities?

ATTY GEN. ASHCROFT: Well, the entirety of the report will be available. The statistical analysis is substantial. These were carefully done studies undertaken both by this administration in terms of the last 250 cases. The previous 700 cases were the subject of an analysis and report undertaken by the last administration.

REP. LAMAR SMITH: And the point, again, is that there's no bias one way or the other, to the best of your knowledge?

ATTY GEN. ASHCROFT: In terms of charging death-eligible crimes, it appears that more frequently whites are charged than blacks, and in asking for the death penalty in those death-eligible crimes, it appears that whites are charged more than blacks or Hispanics. And it also appears that this is true whether the crime is white on black or black on black or black on white. So that there is a substantial basis for confidence that -- and Congressman Conyers pointed out that this study does not purport to address the state level, where most of the prosecutions for death-eligible crimes take place. But at the federal level, there is an absence of any evidence of bias or racial discrimination.

REP. LAMAR SMITH: Thank you for your answers.

REP. SENSENBRENNER: The gentleman's time has expired.

The gentlewoman from Wisconsin, Ms. Baldwin.

REP. TAMMY BALDWIN (D-WI): Thank you, Mr. Chairman.

To keep within the chairman's strict enforcement of the five- minute rule, I would ask unanimous consent to be able to submit follow-up questions for answer --

REP. SENSENBRENNER: Without objection, pursuant to the deadline announced at the beginning of the questioning.

REP. BALDWIN: Thank you.

General, my question is in regard to mergers and consolidation in agriculture, something that is of great concern to me and the constituents I represent.

Last session, former Indiana Congressman Ed Pease and I asked former Judiciary Committee Chairman Hyde for a hearing on this issue.

And it was a very informative hearing, and it's something that I hope we will continue to look at in this committee.

But as you know, more and more segments of agriculture are facing increased market concentration. For example, according to the University of Missouri --

ATTY. GEN. ASHCROFT: (Chuckles.)

REP. BALDWIN: -- which annually reports on these matters, four corporations control approximately 80 percent of the beef packing market. Farmers in all commodities are increasingly finding that they can sell their product to only a few companies, which drastically reduces a farmer's market power.

As you know, a farmer's produce is unique. Food is a human necessity, and most farmers can't withhold products from the market in an attempt to increase demand and price for their commodity.

Their products have a limited shelf life, without processing. In many sectors, farmers are dependent on processors to add value to their product. In these instances, farmers cannot sell directly to retailers; they can't cut out the middleman, because their commodity must be processed to have worth to the ultimate consumer. Because the farmer is dependent on the processor and because agribusiness has become so consolidated, farmers are now at the mercy of agribusiness to give them a fair price, and they have nowhere else to go.

General, I know that you are concerned about this issue, also. You introduced the Fair Play for Family Farms in the Senate last year, and one of the provisions of your bill would have added a new position of assistant attorney general for agricultural competition within the Department of Justice who would have been responsible for agriculture-related antitrust matters. My questions are, do you still feel that the Department of Justice needs such a position created to be able to adequately enforce agriculture antitrust matters? If not, why not?

And on a related note, I'd be interested in your opinions on what additional authority the Department of Justice needs to assist in their oversight of the -- assist the Department of Agriculture in their oversight of the Packers and Stockyard Act.

ATTY. GEN. ASHCROFT: Well, I thank you very much for the question. It reflects a series of concerns that I was accustomed to articulating when I served in my prior incarnation on the other side of the Capitol, and in many respects, it emphasizes the need for a perspective on the part of the Department of Justice that looks upstream to producers as well as downstream to consumers when we come to the point of agricultural mergers. And I think there is a responsibility to do so, and I have spoken to those who are responsible and in charge of the Antitrust Division in the Department of Justice to indicate and to confirm with them that I want upstream analysis as well as downstream projections, so that producers are adequately regarded in any proposed mergers or acquisitions that would consolidate further the industry.

We have, pending Senate confirmation, a new Antitrust Division chief, and I can commit to you that I will make clear to the Antitrust Division chief who is to take charge that I expect that to be a part of his considerations. Those who are running the Antitrust Division now have committed to me that that is a part of their consideration, so that each person in the division that evaluates mergers and acquisitions is -- is evaluating with that in mind.

I should add that there is a person that I maintain as designated in the department to look at those aspects of agriculturally related mergers and acquisitions, and his name is Mr. Doug Ross.

And his specific responsibility is to develop this awareness and maintain and help the division understand the need for upstream as well as downstream analysis when it comes to mergers and acquisitions in agribusiness.

My time is up, but let me just say one other thing. I'm eager to participate with the Department of Agriculture in terms of making sure that the Packers and Stockyards Act is adequately enforced. Some of the governmental reporting in recent times has indicated that there hasn't been the kind of complete and vigorous enforcement of that act which might otherwise relieve some of the distress for America's farmers.

REP. SENSENBRENNER: The time of the gentle woman has expired.

The gentleman from Ohio, Mr. Chabot.

REP. STEVE CHABOT (R-OH): Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for appearing before us this afternoon.

As you mention in your opening statement and as we've had an opportunity to discuss recently, there's been some very unfortunate racial unrest in my district, in my home town, Cincinnati, and the entire community has been deeply troubled by these events. As you know, some national media reports have suggested that the problems stem from the Cincinnati police being involved in the

deaths of 15 African American suspects since 1995. However, they generally fail to mention that the vast majority of these incidents involved suspects wielding weapons and threatening police. According to a story written by Derrick DePledge (sp) in the May 20th edition of the Cincinnati Enquirer, six of the suspects were armed with guns, another took an officer's gun away and shot another officer, one was armed with a knife, one wielded a brick and charged police with the brick, another threatened a police officer and, in fact, took a swing at the police officer's head with a board containing protruding nails, and another two incidents involved suspects in cars, one of which tragically dragged a Cincinnati police officer to his death less than a year ago. It was back in September of last year. And I raise this issue because I'm hopeful that the Justice Department will proceed in a fair and open-minded manner, carefully reviewing the facts in each of the cases while conducting the investigation in a cooperative manner. I recognize that you made a commitment to this cooperative approach back on May 7th of this year, just about a month ago, when you issued a statement announcing that the Justice Department had opened a pattern and practice investigation of the Cincinnati Police Department and that the Justice Department will provide Cincinnati with expert technical assistance on how to best reform their policing practices. You said the Justice Department's focus will be on assisting the city to solve its problems and rebuild trust among citizens of Cincinnati, and that the Justice Department will work cooperatively with the city to institute policing reforms as quickly as possible.

An official in the Justice Department Civil Rights Division was quoted in the Cincinnati Enquirer as saying, quote, "We are trying to create a new emphasis on cooperation," and went on to say that "I think cooperation is a much better way to proceed rather than an adversarial way." From what I know and from what I've read about pattern and practice investigations conducted by the Justice Department Civil Rights Division under the previous administration, such as the investigations into Pittsburgh and Steubenville and Columbus, Ohio, those police departments -- those investigations were conducted in a more adversarial manner. So your stated approach is something new.

Now, I have several questions. How does the Civil Rights Division intend to implement these changes? And will the division notify the city and the Cincinnati Police Department of its findings as the case proceeds during the investigative process? Will the city be given a chance to voluntarily make changes to its policies without being bound by a consent decree?

And additionally, in your opening statement you had said that protecting the civil rights of all Americans is a priority, and referred to your department's actions in Cincinnati. First, I want to state that I strongly agree with you, as I know all the people in Cincinnati do, that protecting civil rights should be a top priority and no citizen should be judged on the basis of their race.

I'd like you to clarify, however, one point. You did not mean to imply, did you, that you or the Justice Department have reached any conclusion in this matter or that you've determined that anybody's civil rights have been violated or that you believe it's the policy of the City of Cincinnati to judge people based upon their race? I'd appreciate your response.

And again, I really do appreciate you being here this afternoon, Mr. Attorney General.

ATTY GEN. ASHCROFT: I thank you.

When we investigate, we have a responsibility to investigate fairly, without preconceived notions. And our intention is to try and do everything we can to provide what's necessary for good communities to operate, and that's a basis of trust between the law enforcement community and the citizen. And we can't do that if we go in with preconceived notions or prejudice about guilt or innocence or other kinds of judgments.

So I want to assure you that I'll do everything I can to make sure that we conduct the business of the Department of Justice in a way which is based on facts and circumstances and the truth. And I thank you for your commitment to that.

Let me just indicate quickly that fixing the blame is one thing you can do, and I think that's a responsibility from time to time for the Justice Department. But fixing the problem is what we really

all ought to be about, and I think we can do that if we cooperate. And one of the things I want to instruct for the division is that when we come to a problem, instead of stacking it up to be revealed later at the end of two years in a report, that we say, "Let's talk about this problem and see how it can be remediated immediately. And let's work as quickly and thoroughly as we can to solve problems."

I would hope that Cincinnati becomes a model -- this is a dream, an aspiration -- for restoring trust between the citizens of the community and those who are responsible for the community. It would be a wonderful way for us to begin our effort together.

REP. CHABOT: Thank you.

REP. SENSENBRENNER: The gentleman's time has expired.

The gentleman from California, Mr. Berman.

REP. HOWARD BERMAN (D-CA): Thank you, Mr. Attorney General. The president has said during the campaign that while he was opposed to a blanket amnesty, he had a very positive view of legal immigration and understood many of the specific situations that occur, and essentially staked out a position different than some in his party had taken over the past five years on key legislative efforts.

Since he's become president, since you've become attorney general, relatively little attention has been paid to four or five actions that you have taken which I think deserve our appreciation and heartfelt thanks, and I think are consistent with the tone the president set on some of these issues.

He extended temporary protective status for Salvadorans -- I mean he provided it as a result of the earthquakes in January and February. He extended for Hondurans and Nicaraguans temporary protected status as a result of their failure to yet recover from the Hurricane Mitch back in 1998.

He has indicated his support for an up to one-year extension in 245(i), the provision that would allow people who either overstayed their visas or entered illegally, but who were being petitioned for by family members or employers, to adjust their status within this country, a very sensible and appropriate position; and, as you indicated in your testimony in response to Chairman Sensenbrenner's question, supporting a reorganization of INS, which separates enforcement from services. But by reporting to one key staff person, both sides, helps to ensure that services don't get short shrift in all of this.

There are some other issues coming up that I think are consistent with being opposed to a blanket amnesty but make some sense, and I want to just throw this out for your consideration. We have kids in this country, many of them, who came here at the age of three or five or eight or 10 or 12, not because of their own decision but because of their parents' decision. As a result of provisions in the 1996 law and other provisions, these people have gone to school, in many cases they have performed excellently, they are valedictorians of classes, they are straight-A students that could qualify for any of our major private or public universities, but they are ineligible, even if a state wants to provide them with in-state tuition, to pay that tuition, are forced to pay many more times than that, frequently losing their chance at public education, or are ineligible to compete on merit, not based on some quota, but just on merit, for any of the federal scholarship programs they apply for.

Mr. Cannon and I and Ms. Roybal-Allard have a bill to deal with this issue. I ask you to take a look at that.

We have a really totally absurd cap that limits the number of asylees that can adjust to legal status. These are people who have been found to have had a well-founded fear of persecution, are in this country lawfully, not asserting a specious claim or even asserting a claim. They have already been determined, adjudicated to be legal asylees in this country, but they cannot adjust their status to permanent resident status because we have a quota of 10,000 a year. That makes no sense. They're in this country, they are here lawfully, they are determined to be here lawfully. This cap makes no

sense, and I think it should be eliminated.

Third, in many sectors of the economy, we have to realize -- take agriculture. Probably anywhere from 50 to 80 percent of the people who toil in some of the most difficult jobs in America today -- harvesting, planting, cultivating our seasonal, perishable fruits and vegetables, are undocumented. We have created some concepts and gotten bipartisan support for concepts involving earned adjustment, where people who have done certain kinds of work and who pledge to continue it have the possibility at the end of the day, based on that work performance, to adjust their status.

You're involved with a binational commission that's looking at some of these migration issues. I hope that that commission doesn't ignore the status of some of these workers in this country who are paying taxes and doing essential work. I think there is a chance in many of these areas to continue what you have already started, working on a bipartisan basis, that I think really is in the country's interest and has great humanitarian, compelling appeal.

And I'd be interested in either long-term reactions or if you have any off the top of your head to some of these issues.

ATTY GEN. ASHCROFT: Well, first of all --

REP. SENSENBRENNER: And on that happy note, the time of the gentleman has expired.

REP. BERMAN: All right. His time or my time?

REP. SENSENBRENNER: Everybody's time.

ATTY GEN. ASHCROFT: Thank you. I'll talk to you about it.

REP. SENSENBRENNER: The gentleman from North Carolina, Mr. Coble.

REP. HOWARD COBLE (R-NC): Thank you, Mr. Chairman.

Mr. Attorney General, for the record, your prayer life does not bother me. I think whether people embrace or reject prayer services may be subject to interpretation. Now if there were some sort of intimidation or coercion surrounding that, it would be a different story, but I can't believe that that's the case.

It was said earlier that the Justice Department is leaking like Niagara Falls. I guess the good news is if the Justice Department is leaking, not gushing like Niagara Falls. If there is in fact a leak down there, Mr. Attorney General, I know -- I'm confident that you will terminate it before it reaches the gushing threshold.

The chairman commented about the FBI's possibly having had its armor tarnished. I still think it's a first-rate outfit, first-rate organization. I'm bothered, Mr. Attorney General, that it has become very bureaucratic, and if you can make that organization a little less bureaucratic on your watch, I would be appreciative. I think others would.

Now permit me to direct attention to our Subcommittee on Courts, Internet and Intellectual Property. Mr. Attorney General, can you update the committee on the extent to which prosecution of intellectual property crimes is becoming a greater priority for the Department of Justice?

ATTY GEN. ASHCROFT: Well, Congressman, I thank you for both your comments and your question. We have recently welcomed to the Criminal Division a newly confirmed -- just last week director of that division.

Crime has developed new dimensions as a result of the Internet, and as a result of the data processing and data transmission. And I can say to you that we take very seriously piracy and theft and the invasion of privacy and a whole variety of issues that are related to the advent of the

capacity of individuals to utilize the computer both in industry and personally. And given the fact that much of America's strength in the world economy is a result of our being the developer and promoter of most of the valuable software, we cannot allow the assets that are held electronically to be pirated or infringed. And so we will make a priority cybercrime issues. And additional resources have been requested in next year's budget for that. And that's not just in this administration's submission in regard to the FBI but in regard to the Commerce Department as well, because they are also concerned about the protection of this area of commerce, in which the United States holds a preeminent position.

REP. COBLE: Well, I'm glad to hear you say that, Mr. Attorney General, because the intellectual property community, as you just pointed out, is a significant contributor to the commercial wheel-turning in this country. And as you also implied, the provisions of the 'net act gives you all additional pegs upon which to hang your hat in pursuing cyberpirates. And I hope that you all are utilizing that at Justice, and I feel confident that you are.

Good to have you with us, Mr. Attorney General. And in the interest of time, Mr. Chairman, I yield back.

REP. SENSENBRENNER: The gentleman from Massachusetts, Mr. Meehan.

REP. MARTIN MEEHAN (D-MA): Thank you.

General, welcome to the committee. The chairman had referenced in his opening remarks that we're reading about developments in the Timothy McVeigh case. I think that that case is giving many in America pause and -- to think about the FBI's reliability.

But for those of us who were in Massachusetts picking up morning papers and reading bombshells about the FBI's practices is, unfortunately, nothing new. We've been treated to an ongoing, multi-year expose of relationships between certain Boston FBI agents and drug-peddling, murderous gangsters. The gangsters gave the agents some information about rival criminal enterprises, and in return, the agents protected gangsters every step of the way, blocking other law enforcement investigators and investigations into their ongoing crime spree, and even letting the gangsters know who was ratting them out to law enforcement officials. The gangsters then would take matters from there.

The FBI's credibility wasn't merely damaged in this instance, it was broken. And the only way to restore that credibility is for the truth to get out and for those who committed and tolerated crimes to be held accountable. It seems to me without accountability there can be no credibility.

Now, the Government Reform Committee has already held one hearing on a narrow piece of this controversy, and Chairman Burton is now moving to expand that inquiry. Yesterday he sent a letter to you requesting a variety of records in unredacted form, including information about the Top Echelon Program, personnel records for former FBI Agent John Connolly, the FBI Office of Professional Responsibility reports on agents' relationships with Whitey Bulger and Steven Flemmi. And the request was for all this information be provided by June 19th.

How do you intend to respond to this document request? In other words, do you anticipate full compliance, partial compliance, or no compliance? And has the letter been forwarded to the special Justice Task Force created to investigate the handling of the Whitey Bulger/Steven Flemmi case? And if so, have you provided any instructions or guidance to the task force in terms of a response?

ATTY GEN. ASHCROFT: Well, first of all, this is a very serious matter and whenever law enforcements are involved in ways that discredit law enforcement and undermine the enforcement of the law, it's to be taken seriously.

We have a Justice Task Force that's comprised of federal prosecutors, FBI investigators from outside of Massachusetts, which is focusing on possible law enforcement corruption relating to the handling of informants in the Boston area. The task force has been conducting this investigation for

almost 2-1/2 years now. And one of the informants recently pleaded guilty to multiple felony counts, including obstruction of justice, extortion, and money laundering.

Now, the ongoing task force investigation has resulted in indictments of additional individuals, including a former FBI agent, that's what you made reference to. Our provision of exculpatory records contributed to the state court relief afforded to some other individuals, whose names I'm not mentioning, but I think you probably know them.

And while the department responded to oversight requests for information regarding one individual in the 1965 murder of Edward Deegan, we have requested that other oversight inquiries regarding these matters be deferred in order to avoid inadvertent interference with the task force investigation.

Let me just say this, that I'm eager to comply with requests. And to the extent that we do not interfere with the responsibility to correct these problems and to prosecute the violations, we'll work to find a way to comply with those requests for information.

REP. MEEHAN: So will you be -- will the partial compliance -- you're not clear yet what will -- whether or not you'll be able to -- the June 19th deadline, in particular. I understand the ramifications of an ongoing criminal investigation.

ATTY. GEN. ASHCROFT: I guess what I'm having to say to you, while I'm not expert in this particular case, I will instruct the department to cooperate to the extent that they don't interfere with our law enforcement responsibility, and if that can be pretty thorough, fine. If it has to be redacted, fine -- maybe not so fine, but it has to be that way -- and there may be areas where we simply have to say we have to defer.

REP. MEEHAN: I think, General, generally, because the American people need to know if this is an isolated instance or not, I think that we're going to have to look to expand to see whether or not there's a culture that we need to look at. Also, obviously, look at the guidelines. Congressmen Delahunt, Frank and I have requested this committee look at a hearing on guidelines as well.

Thank you.

ATTY. GEN. ASHCROFT: Thank you.

REP. SENSENBRENNER: The gentleman's time has expired. The gentleman from Pennsylvania, Mr. Gekas.

REP. GEORGE GEKAS (R-PA): I thank the chair.

General, the newspapers, particularly the Washington Post of recent date, and also some TV coverage, has focused on the other death row case -- not the McVeigh case, but the one in which the drug kingpin has been convicted and properly sentenced and a date of execution set for him. These newspaper articles, quoting the various moratorium groups, et cetera, and defense attorneys for him, I suppose, all were maintaining that the studies that were promised have not been fulfilled and there is great question about disparity of treatment and so forth. I believe you've answered all of those questions in the testimony that you've given today, and I've reviewed your written testimony and there should be no doubt that the study, both the one initiated by the Clinton administration and yours, confirm that the process for the federal death penalty has been well- proportioned.

The question I have now, in view of the fact that the studies have confirmed the position that we all wanted to see happen in the application of the death penalty on the federal level, has there been any movement to set that execution back even further than the first postponement?

ATTY. GEN. ASHCROFT: No.

REP. GEKAS: So that is scheduled for when?

ATTY. GEN. ASHCROFT: (Confers with staff.) That's June the 19th.

REP. GEKAS: All right. And the newspaper accounts also indicated that the individual involved wrote a letter to the president asking for a commutation. Have you been consulting with the president, giving him your recommendations and the data that might be needed for his consideration?

ATTY. GEN. ASHCROFT: Well, I'm happy to consult with you here. I will make my consultations with the president to the president, and not in the committee, if possible.

REP. GEKAS: No, I'm just saying, have you consulted? I'm not asking what the nature of it was.

ATTY. GEN. ASHCROFT: You know, Garza claims that he's the victim of ethnic and geographic disparity, and even though he's clearly guilty of these crimes. And it must be noted that the southern district of Texas where he was prosecuted only submitted cases involving five defendants to the department's capital case review procedure before 1995; and all of these defendants were Hispanic, but the district recommended against seeking the death penalty for any of those. The attorney general accepted the U.S. attorney's recommendation not to seek the death penalty in those cases, but Garza -- so it's -- he's not a part of a situation where there's an automatic effort for Hispanics.

He's an individual who, I think seven of his eight victims were Hispanic. And if I'm not mistaken, the he was tried in a context by his peers. So that there is no reason that I know of to defer his execution.

REP. GEKAS: Thank you. That confirms the Congress' initiative several years ago to make a special case out of the drug kingpins who would murder and direct the killing of others in the furtherance of their criminal enterprises. I thank you for your response to that.

One other question, and that has to do with what policy may have been established thus far in your administration on the use of so-called secret evidence or classified information in the proceedings before immigration authorities. Is there a sense of what you might be recommending there? Because our committee is going to have to grapple with that sooner or later again.

ATTY GEN. ASHCROFT: Frankly, the president of the United States has expressed his discomfort with this aspect of American immigration. And we have not to date during this administration used such evidence. I think it is an issue worth our working together on and would welcome a discussion about how we manage the responsibilities of effectively enforcing our laws, and also of protecting the rights and respecting individuals in their own rights.

REP. GEKAS: I thank the general, and I return the balance of my non-time.

REP. SENSENBRENNER: And that's what it is.

The gentleman from Virginia, Mr. Scott?

REP. ROBERT C. SCOTT (D-VA): Thank you.

General Ashcroft, we've been talking about the racial profiling. The reason that people have the belief that they shouldn't be profiled is found in the Constitution, the unreasonable search and seizure provision. Usually that provision is enforced by the exclusionary rule. If you've had an unreasonable search or seizure, what evidence it has gained as a result of that can't be used at trial, and that eliminates the incentive that police have to collect illegal evidence. Although a guilty person might occasionally go free, innocent people aren't subjected to the indignity of these illegal searches. I guess my question is if we're serious about prohibiting racial profiling, it seems to me that the traditional way of enforcing that provision of the Constitution ought to be used; that is, to prohibit the use at trial of any evidence obtained after a profile stop. Now, what are your feelings about using the exclusionary rule to put an end to racial profiling?



ATTY GEN. ASHCROFT: Well, obviously I believe racial profiling is wrong. And I think we ought to do what we can to eradicate it. We're in the process of doing that in the federal government, and we -- in assessing where we are. And I was pleased to have Congressman Issa's approach on that.

I would be willing to discuss the idea. Frankly, that's the first suggestion that I've -- and rather than announce a conclusion on it, I'd confer with Justice Department individuals in that respect.

REP. SCOTT: That's fine.

ATTY GEN. ASHCROFT: I think that's as far as I want to go right now on that.

REP. SCOTT: Okay.

We've talked about the McVeigh case for a little while. It seems to me that mountains of material did not get turned over as the court had ordered it to be turned over. Are you satisfied that Mr. McVeigh got a fair trial?

ATTY GEN. ASHCROFT: I am satisfied. And let me clarify to some degree, if I can. The eligible universe of documents was almost infinite. There were hundreds of thousands of documents that could be arguably required to be turned over. And when I learned that there were 3,000 so-called "documents," I said we cannot expect people in four days to digest these and make appeals or what have you, so we put out a universal order to sweep the offices, to collect any documents and to provide those to the defense.

They were provided to the defense, and we looked at them first. The defense came up with documents that they said could possibly have any relevance. They could only name nine of them. You know, we had things like people writing letters in saying that "If you'll give me a billion bucks and if you'll release my boyfriend from prison and arrange for me to meet with some royalty in Europe, I'll tell you who's responsible for the bombing." Or people who sent in folders of newspaper clippings. Those were among the documents. So the defense found only nine documents, and it alleged those in a submission to the court, the federal court. And we looked at those nine submissions. And every fact in those nine documents was a fact that was disclosed in other documents that had previously been provided.

REP. SCOTT: Were they entitled to these documents?

ATTY GEN. ASHCROFT: They were entitled to the documents pursuant to the agreement at trial that all documents.

REP. SCOTT: And they were not turned over?

ATTY GEN. ASHCROFT: They were -- these documents were not there at the time of the trial. And I --

REP. SCOTT: Well, then what -- well, I think you've answered the question.

Let me ask you one quick question, if I can. If a person is fully qualified to be a drug counselor, should he be entitled as a matter of law to apply for that federally funded job without being discriminated against because of his religion?

ATTY GEN. ASHCROFT: It depends on who the employer is. The Congress exempted, in the most recent reauthorization of SAMHSA, certain religious groups in the faith-based community who participate under the provisions of the SAMHSA law, religious groups from their involvement in Title VII. So I think -- I'm giving you my best legal judgment here, and I think that's probably what you are driving toward.

REP. SENSENBRENNER: The gentleman's time has expired.

The gentleman from Arizona, Mr. Flake.

REP. JEFF FLAKE (R-AZ): Thank you, Mr. Chairman.

Thank you, General Ashcroft. I want to commend you for getting to Arizona so early in your tenure. There are a lot of issues, as you know, there. I was just outside speaking to one of the ranchers, Dan Bell, from southern Arizona, who ranches on the border, who mentioned that they have as many as 300 illegal immigrants come onto their ranch every week.

So, as you know, it's a large problem there.

Another issue that points up a lack of communication sometimes between the INS and local law enforcement agencies is the fact that sometimes potential criminal aliens are deported before charges can be brought or fully explored and the process go on. I know that some of those issues have been resolved. Can you comment on efforts by the Department of Justice to actually remedy that situation?

ATTY GEN. ASHCROFT: Well, this administration is very sensitive to the safety of the communities and to the safety of the border area. And frankly, we are interested in the safety of all individuals at the border. We were distressed immeasurably at the deaths of over a dozen individuals near Yuma a very short time ago.

But we are also very concerned about law enforcement. We feel that when the Congress enacts and expresses the will of the people and it's signed by the president in law, it is to be respected, and it is to be enforced. And the responsibilities for safety and security and law enforcement are not just federal in the border area; they are -- it is a combination, joint responsibility between the communities, the states, and the federal government.

And the president of the United States included -- for example, to reflect his keen understanding of the additional burden of those counties that are border counties, he proposed in his budget this year of an additional \$50 million to assist local prosecutors at the border, so that the team effort that we have that respects the rights and the integrity and security of individuals can include an aggressive law enforcement effort by both state, local, and federal officials.

So with that in mind, I think this administration is committed to safety, not just the border safety initiative itself, which is designed to make sure that we treat people with respect and as our first priority secure their safety, but also that we have the right law enforcement impact in border communities.

REP. FLAKE: You mentioned the deaths last week -- it was 17 or 18 now, I believe, illegal immigrants perished in the desert trying to cross, 110 degrees. We're hearing reports now that the Mexican government actually has a program, a \$2 million program, to distribute survival kits. Can you comment on that? Do you know anything about that? Is that overblown? And to issue survival kits to people attempting to cross the border -- has that come on your radar screen and --

ATTY GEN. ASHCROFT: Yes, it has. Many of us are torn, and a good number of American citizens are torn to see the human misery that comes with people who enter the desert unprepared. But I personally think it's not the right thing to do to have survival kits distributed to people in anticipation of their effort to cross the border illegally. I've expressed that opinion to the individuals in the government of Mexico, and it's my understanding that they have not embraced the program.

This issue is one that is current. I noticed CNN last night had a substantial bit of programming on it, and it's a matter of deep concern. But we don't think solving this problem is -- we don't think the problem is susceptible to solution by equipping people who would illegally come across the border.

REP. FLAKE: Well, I commend you for having the U.S.-Mexico Migration Working Group, and I hope that issues like this are dealt with in that context and that we move toward solutions like Congressman Berman and Senator Gramm and others are talking about with the guest worker

program.

ATTY GEN. ASHCROFT: Well, frankly, I think we've been able to make some progress, and we would look forward to your suggestions and advice and making the border a community which is safe and secure.

REP. FLAKE: Thank you, Mr. Chairman.

REP. SENSENBRENNER: The gentleman from California, Mr. Schiff.

REP. ADAM B. SCHIFF (D-CA): Mr. Attorney General, as a former assistant U.S. attorney I have a great regard for the department. I want to welcome you here today.

ATTY GEN. ASHCROFT: Thank you.

REP. SCHIFF: I wanted to ask you, I think there's a great probability that during the course of your tenure there may very well be a change in the membership of the U.S. Supreme Court. You committed here today and in your confirmation proceedings to enforce the laws of the land, and I wanted to ask you about a couple in particular in the event that the membership of the court changes.

If there is a(n) effort legislatively or otherwise that is direct, unequivocal, and on its face designed to overturn *Roe v. Wade* with a new court, can we count on you and the Justice Department to unequivocally oppose that effort and oppose *Roe v. Wade*?

ATTY GEN. ASHCROFT: I don't understand the question. You say if there's a -- if there is legislation?

REP. SCHIFF: In other words, if we have a new membership of the court and some view it as an opportunity to get the new Supreme Court to re-visit *Roe v. Wade*, perhaps overturn it, can we count on the Justice Department to defend *Roe v. Wade* and encourage and urge the new court to follow the *Roe v. Wade* precedent?

ATTY GEN. ASHCROFT: Well, I consider *Roe v. Wade* to be settled law. And I will not try to forecast individual cases and how I would argue and what legal strategy would exist in individual cases. That's not something that's important for me to do. But *Roe v. Wade* is the law of the land, and I respect it and will enforce the law as it is.

REP. SCHIFF: I'm not asking you to comment on a case that may arguably be in opposition to *Roe v. Wade*, but where there was a direct and unequivocal effort to overturn the case, we can count on you to defend it even with a new court.

ATTY GEN. ASHCROFT: I would say to the court that I considered *Roe v. Wade* to be settled law.

REP. SCHIFF: Similarly on the issue of guns, Mr. Attorney General, if there is an effort either with this court or subsequent court to either strike down portions of the Brady law, or in the event that the McCain legislation to close the gun show loopholes passes, can we count on the Justice Department to argue that the Brady law and the closing of the gun show loopholes are consistent with the Second Amendment?

ATTY GEN. ASHCROFT: The answer to that is yes. I will defend the enactments of the United States Congress as signed by the president. And this president is in favor of closing the gun show loophole, so this administration is on record of doing that.

REP. SCHIFF: One of the bills that I hope will pass this session is a campaign finance reform measure, and I wanted to get your thoughts on that should McCain-Feingold pass in the same form that is currently passed out of the U.S. Senate. Can we expect the Justice Department to vigorously

fight to make sure that it is -- withstands any attack under the First Amendment or any other challenge?

ATTY GEN. ASHCROFT: I consider it my responsibility to defend the enactments of the United States Congress and would expect to do so unless there were a blatant part of a measure which was clearly unconstitutional which would place me in contravention with my oath to defend the Constitution.

Q In your personal view, would a ban on soft money be consistent with the First Amendment?

ATTY. GEN. ASHCROFT: I'm not prepared to make a complete response to that now, but I would expect it to be. I don't think that it's not.

REP. SCHIFF: Finally, Mr. Attorney General, I wanted to encourage you and follow up on, I think, Mr. Gekas' question with respect to the secret evidence rule. I had the unfortunate distinction, when I was in the U.S. attorney's office, of prosecuting the first FBI agent accused of espionage, Richard Miller. In that case, we successfully used the Classified Information Procedures Act, which I thought was a good balance between the imperatives of a prosecution, the need to protect classified data, and also the ability to give the defense opportunity to defend itself. And I would encourage you, Mr. Attorney General, to consider using a CIPA-like process to repeal the secret evidence rule, but put in place a mechanism that I think will protect the public safety and at the same time observe the constitutional rights of anyone detained.

ATTY. GEN. ASHCROFT: Well, I want to thank you for your sensitivity to those issues. We recognize those issues as being very difficult issues, at the tender intersection between the need for national security and the rights that individuals have, and we would welcome the opportunity to help decide and to participate in your deliberations. I believe ultimately the Congress will make the decision, but we would like to work with you in that respect, if possible.

REP. SCHIFF: Thank you very much for your appearance, Mr. Attorney General.

REP. SCHIFF: The gentleman's time has expired. The gentleman from Georgia, Mr. Barr.

REP. BOB BARR (R-GA): I'd like to echo the thoughts of many of our colleagues and thank you for your appearance here and take this opportunity on the record, Mr. Attorney General, to congratulate you for taking on this service as our nation's attorney general.

ATTY. GEN. ASHCROFT: Thank you.

REP. BARR: I'd like to also echo the sentiments expressed by former Chairman Hyde in commending you on the fine selection of many of your staff. Actually, all of your staff, but many of your staff came from the Judiciary Committee, and you've acted most wisely, even though it has decimated our ranks over here.

ATTY. GEN. ASHCROFT: (Laughs.)

REP. BARR: But we do appreciate that, and appreciate working with them.

You're a very patient man, a true gentleman, to sit there earlier in the face of what I consider one of the vilest attacks I've ever witnessed on a witness simply coming before this committee and answering questions. In the space of about 15 minutes, you were blasted for handling a case involving a sitting United States senator from which you have recused yourself; you were blasted for replying to a letter from a bona fide organization requesting the department's views on one portion of the Bill of Rights, and your letter back to them simply said that that portion of the Bill of Rights, it happened to be the Second Amendment, as with other parts of the Bill of Rights, by definition and practice and history, indeed do confer rights and reflect rights of individuals.

You were blasted for praying, and then when you, in your later comments, indicated to this

committee that you had undertaken in the face of some evidence and some criticism regarding the application of the death penalty by the federal government, that you had undertaken some, I think, very important initiatives to look into this and change some of the procedures, you were blasted for that. Obviously, you would have been blasted for anything you have said -- you would have said there -- and you are very much of gentleman for just sort of sitting there and taking that sort of treatment. I commend you for that.

With regard to the death penalty, and in light of the two pending federal death penalty cases that have been in the news much lately, that of Mr. Garza and Mr. McVeigh, in light of the fact that the court today with jurisdiction over Mr. McVeigh's case ordered that no further delays, as far as that judge was concerned, would be granted -- which I believe also reflects the position of the Department of Justice -- is that correct?

ATTY GEN. ASHCROFT: That's correct. We do not believe that any further delay in justice is warranted. We think that a delay in justice would be a denial of justice.

REP. BARR: And in light of the impending execution of Mr. Garza, for which you've indicated today the position of the Department of Justice is that that execution also should move forward as scheduled, do you see any reason at this time to consider what has been termed a "moratorium" on death penalty cases?

ATTY GEN. ASHCROFT: Frankly, having conducted the very thorough study -- that is, a sequential study to the very thorough study conducted by my predecessor, Ms. Reno -- she studied 700 cases, and we studied an additional 250 cases -- neither she nor I, as attorney general, on the basis of those studies, could find a reason for a moratorium. There is no indication that in the federal death penalty system, there is any prejudice on the basis of race or bias on the basis of race. The only information is that slightly more frequently among whites is the death penalty sought than it is among either blacks or Hispanics.

And on another note of principle, I would say that this Congress and previous Congresses have established a clear policy for the United States that there are certain acts so heinous in their character that they deserve the death penalty. And for me to somehow seek to displace this value judgment in the law established by the Congress, signed by the president, the expression of the will of the American people, would be, I think, inappropriate. I think there is no reason for us to have a moratorium in the federal system on the death penalty. And the judgments that we've reached on the studies affirm that.

We are going to study additionally whether or not murder is appropriately understood in the culture and is punished as it should be, because there is some suggestion that there is an inadequate regard and that life has become less protected than it ought to be.

REP. BARR: Thank you.

I'd like to ask unanimous consent, Mr. Chairman, to include in the record a letter dated May 17th, 2001, from the attorney general, referred to earlier, setting forth his views on the application of the Second Amendment to citizens of the United States.

REP. SENSENBRENNER: Without objection, so ordered.

The gentlewoman from California, Ms. Lofgren.

REP. ZOE LOFGREN (D-CA): Thank you, Mr. Chairman.

General Ashcroft, I appreciate your being here today. And I am sure there are many things that you and I don't see eye to eye on, but I want to ask you a question about something that is non-ideological, and that is the management of the Immigration and Naturalization Service.

We all spend a lot of time on that. I want to just make a couple of brief references to letters I've just

recently received about this. One is from the program director for Catholic Charities in Santa Clara County, about the Nicaraguan Adjustment and Central American Relief Act. He says the Asylum Office in San Francisco is simply not scheduling NACARA interviews. They contacted the Asylum Office. They said it's third priority; really as a consequence, there will be no NACARA interviews.

ATTY GEN. ASHCROFT: I'm having trouble hearing you.

Pardon me for interrupting you. But I --

REP. LOFGREN: I'll try to speak closer to the microphone.

Essentially that the San Francisco office is having simply no NACARA interviews. Many of these clients have been waiting for 10 years to legalize their status, and there's apparently no plans to make progress on the backlog.

And I wanted to do just a few quick snippets out of 10 pages of a letter that I'd like to make a part of the record, just to give you a flavor for what it's like.

"Friday, March 9th, 2001. My son-in-law and I set out early for the San Jose INS office. We arrived at 5:10 a.m. and were shocked by what we saw. The line to get in at 7:00 a.m. was already stretched the entire length of the building along the walls of the inner courtyard, through the parking lot and out to the street. The first person in the line had been there since 6:00 p.m. Thursday night. By midnight, there were many people camping out in line. By the time we were in line at 5:00 a.m. there were many families with children and quite a few pregnant women."

This is an inexcusable remedy to ensure getting in the next day. It was absolutely barbaric.

"We finally left the San Jose INS office at 1:45 p.m. What should have taken no longer than five minutes or should have been handled via the mail took eight hours and 45 minutes of sheer hell. Having to deal with it in person in the San Jose INS office is emotionally draining, mentally abusive, and physically exhausting."

And this person also feels she's been financially victimized.

In my office we're dealing with most cases that were filed in 1999, two-and-a-half to three years to process routine matters. And my question is -- and I realize this is not just of your making, this is a problem of long-standing. But the question is, with regard to service, why have areas with significant backlogs, that is backlogs in excess of six months, not received more staffing to address the backlogs? And how long will it take the INS to process benefits with the same level of efficiency as the Social Security Administration?

ATTY GEN. ASHCROFT: That's a very good question, and I don't have a very good answer. I can't tell you how long it's going to take. We're -- I'm appointing a person of excellent credentials and outstanding quality -- I'm not appointing, I'm recommending to the president, who I believe is nominating that person, and I shouldn't suggest it's my appointment. And I think we have a chance, but we're going to have to work together.

It stuns me to think about people starting to line up at 6:00 one night. The public safety considerations for people who have to stay out all night are substantial, and that's unacceptable.

And we will do -- you know, the president has -- and I've already detailed in this hearing the president's budget request for additional personnel, about \$100 million a year for the next five years running, to move us to a six-month interval instead of a multi-year interval. But I can't tell you exactly when that will happen. I wish I could assure you, but I can't. I can assure you that we will impress upon the new director the urgency, and will work aggressively with this committee for reform in this respect.

REP. LOFGREN: General Ashcroft, one final question. I mentioned two weeks ago, when you

were gracious enough to have us for breakfast, the Unaccompanied Alien Child Protection Act, which I have introduced along with Congressman Cannon here in the House, and Senator Feinstein and Senator Chafee in the Senate.

And it would allow children who are unaccompanied who are seeking asylum to be treated as children are treated when they're abandoned or alone instead of incarcerated in juvenile halls or, in some cases, even with adult prisoners. You had not had a chance to look at that bill when we met two weeks ago. I'm wondering if you've had a chance to review it and if you know whether or not you can support it.

ATTY GEN. ASHCROFT: I'm not prepared to indicate support, except I am prepared to say this is a problem, and I think I addressed another questioner earlier, this is a problem that we must address. Not just children, but people who are detained who haven't committed crimes and who are detained for long periods of time are an embarrassment to our system of justice and freedom, and I would like to find ways to resolve this, particularly for innocent children.

REP. LOFGREN: Thank you very much.

REP. SENSENBRENNER: The gentle woman's time has expired.

The gentleman from Indiana, Mr. Hostettler.

REP. JOHN N. HOSTETTLER (R-IN): Thank you, Mr. Chairman.

Attorney General Ashcroft, let me welcome you today. Initially, as was mentioned earlier, many of us were intrigued by a story in the Washington Post that seemed to be critical of you for having a bible study in the Department of Justice. I believe such activity is well within the First Amendment, and was actually encouraged by our Founding Fathers. I can just imagine how apoplectic the writers at the Washington Post would have been had they had to report on John Quincy Adams' activities as a senator whenever he attended services both in the Capitol and the U.S. Treasury. In fact, I hold a weekly bible study in my office and would be happy to have you over any time.

I also want to quickly reiterate what Mr. Smith said regarding enforcement of obscenity cases. The previous administration was grossly negligent in this area, and I hope you will work to change this.

My main today is over enforcement of the Freedom of Access to Clinic Entrances Act, or FACE Act. As you are aware, this act was passed by Congress and signed by former President Clinton in response to what its supporters claimed to be a national conspiracy of violence. I had serious concerns over the effect of the FACE Act and the enforcement steps taken by the previous administration.

First, it seems to me that FACE has some free speech concerns, and that is viewpoint-discriminatory. The motive element requiring that the pro-life protestor is there because of the abortion nature of the clinic I believe singles out one viewpoint. In addition, I also think the act unnecessarily groups together violent actors and peaceful protesters seeking to express their opposition to the practice of abortion on demand.

I am aware, Mr. Attorney General, that you have been repeatedly criticized for your life-affirming views. I understand, however, as you do, that the FACE Act went through the proper constitutional procedures and was signed into law. I also understand that the statutory language gives the attorney general some responsibilities. The FACE Act makes for a tough balance considering the passionate views about the life issue and the fundamental freedom of speech.

Although FACE certainly allows for Justice involvement in prosecution, I think there would be prudential limitations the department takes into consideration when state and local officials have the resources to enforce FACE and the Justice Department's resources might be better allocated elsewhere. For example, I have some concerns about turning low-level misdemeanor offenses into cases for federal prosecution. Similarly, I think it is a problem when simple leafleting is prosecuting

as a federal offense. This seems particularly poignant given the previous administration's lack of enforcement of, say, federal obscenity laws.

In this regard, Mr. Attorney General, have you in your relatively new capacity had an opportunity to evaluate the previous administration's approach to FACE enforcement and to develop a policy of your own?

ATTY GEN. ASHCROFT: Thank you, Congressman. First of all, I take very seriously violence at abortion clinics or in any other settings. And I am currently very much interested in the extradition of one individual now held by French authorities who allegedly murdered an abortion doctor. And I have been active in pursuing that. So I take it very seriously. And I think the law is to be enforced.

If my recollection serves me well, we have had about maybe a dozen enforcement actions a year, so that the FACE Act does not consume a substantial enforcement responsibility of the overall load of enforcement in the Justice Department. This is not because we do not enforce the law with the kind of energy or vigor that it would be required. It's just that there aren't that many circumstances.

So I guess I would indicate that, as you have, that the FACE Act was passed with the kind of sensitivity to the process that it deserves. It deserves to be enforced and respected. It's the responsibility of the attorney general to enforce it. I have pledged to enforce the law thoroughly and completely. But it is clear, if you look at the data, that the number of complaints is not overwhelming and does not consume a substantial portion of the Justice Department's resources.

REP. SENSENBRENNER: The gentleman from New York, Mr. Nadler.

REP. JERROLD NADLER (D-NY): Thank you, Mr. Chairman. Mr. Attorney General, I welcome you also --

ATTY GEN. ASHCROFT: Thank you.

REP. NADLER: -- I also welcome you to this committee.

Let me start by simply observing and following up on Ms. Lofgren's questions that in New York, it take 18 months to get an interview for citizenship, with major problems for the applicants in the intervening period. They can't leave the country to visit an ailing parent, for example, without getting put back at the end of the line, and other problems. At one time, this took two weeks. I hope that you will, in terms of assignment of staffing and appropriations, relieve this problem in the New York area, which is not unique in the country. But it's 18 months in New York, and that's frankly not good.

Second, let me ask -- I have three quick -- three questions. I hope your answers will be brief, because there are three of them. First, I just today received notice of a decision by the Department of Justice yesterday that the department has declined to prosecute local police officers in New York who encircled one of my constituents, Mr. Gideon Bush, and shot him to death even though he was holding only a small hammer at the time and was clearly an emotionally disturbed person. As you my know, the Borough Park community in Brooklyn, which I represent, is extremely agitated over this sudden and somewhat surprising decision.

The last time I had a meeting on this subject at the department, the meeting was with former Deputy Attorney General Eric Holder, who assured me there would be a careful investigation of this matter. I'm a little troubled that this administration seems to have handled the question very quickly.

Have you personally reviewed this matter, and can you elaborate on the department's reasoning on this question, or could you assure us that it will look further into it?

ATTY GEN. ASHCROFT: I have not personally reviewed this case or the evidence of it. The matter was handled by the U.S. attorney from the district. Obviously, this is the U.S. attorney whose responsibilities have been in existence for a number of years. And the U.S. attorney came to the



conclusion and recommended that the investigation be closed. That's the entirety of my understanding of the case.

We left the case exactly in the posture, with the same personnel, without direction, that Mr. Holder had when he was acting attorney general during the first interval of the Bush administration and during his previous time as the deputy.

REP. NADLER: Well, I would hope that it would be possible perhaps to schedule a meeting with some of your people so that maybe the department would not leave it in the same position as the previous administration, because I don't think they handled it very well. So I'd hope that maybe we could be exploring that further.

ATTY. GEN. ASHCROFT: We'll be glad to speak with you in regard to the matter.

REP. NADLER: Thank you. I also want to ask, on a different question, I was somewhat surprised to hear you comment to, in response to Mr. Scott's question, that a federally funded program might be able, legally, to discriminate on the basis of race or sex or whatever, depending on who the employer was.

Now, I question the constitutionality of that, and I would also point out that at a recent hearing, at a May 23rd hearing on the issue of charitable choice, which is what you were referring to, the witness from a teenage counseling program often touted by the president as an example of his ideal faith-based program, stated that while some Jewish participants in the program remained Jews, others became what he termed "completed Jews," which, from a Jewish point of view, is an offensive term, because it -- it -- it implies that someone who adheres to the Jewish religion is not complete; that the Jewish religion is not complete.

Do you think it's appropriate to use taxpayer money to convert Jews into "completed Jews," or to advocate converting from one religion to another, which obviously is what this group does? And how do you avoid this problem when the substance abuse program uses a religious model as the basis for its cure?

ATTY. GEN. ASHCROFT: First of all, I do not believe that government resources should be used for proselytizing or evangelizing or otherwise achieving religious purposes. The purpose for which government resources should be used should be secular purposes and governmental purposes.

When the Congress, in enacting the charitable choice provisions in the 1996 Welfare Reform Law, provided a basis for allowing faith-based organizations to participate, the Congress specified that no such funds could be used for those purposes and, secondly, specified that in the event anyone is offended by receiving services from such an organization, they have a right to get them in another setting.

REP. NADLER: I -- I don't want to interrupt you, but I do have one other question. I assume, then, that this was an abuse of the program and that you'll look into it.

Just very quickly --

REP. SCHIFF: The time of the gentleman has expired. The gentleman from Utah, Mr. Cannon.

REP. CHRIS CANNON (R-UT): Thank you, Mr. Chairman. Mr. Attorney General, let me just express, first of all, the great pleasure that I have with you serving in your capacity, and as a matter of integrity, intelligence and grace, and I appreciate your forthright and clear testimony thus far today.

You may be aware, if you're not aware of these issues, they're technical enough we can skip them over, but we are in spasm of conflict in Congress over how to encourage the promulgation of broadband. And one of the issues that has been poignant has been the scope of antitrust as to broadband.

In March of this year, the Justice Department, together with the Federal Communications Commission, filed a joint amicus curiae brief in the 11th Circuit in the case of Intermedia Communications versus Bell South. The amicus brief was a joint DOJ and FCC commentary on the court's holding in an earlier case in the 7th Circuit, which was Goldwasser versus Ameritech. The Justice Department's amicus brief argued that Goldwasser and its progeny are clearly in error.

This committee is now wrestling with what to do about the Goldwasser decision. I applaud your department and Chairman Powell of the FCC for setting the record straight, that the antitrust laws of the United States continue to apply to telecommunications providers operating under the Telecommunications Act of 1996. The Department of Justice is also to be commended for recognizing the explicit antitrust savings clause that this committee and the Congress included in the 1996 telecom act.

Now for the benefit of the members of this committee, would you please summarize your department's position on the Goldwasser decision and the way that decision has been interpreted by the recent Bell operating companies in subsequent litigation?

ATTY GEN. ASHCROFT: Thank you very much. In asking the question, I think you've defined the position of the department relatively clearly. I would just reiterate the fact that in the enactment of the 1996 telecommunications reform measures, the Congress expressed its will and intent with very substantial clarity, with a savings clause indicating that the antitrust prerogatives that inure to the enforcement authorities would remain in place. When the courts of appeals indicated that this was -- or at least wrote an opinion which was interpreted to say this was no longer the case, we felt it very important that the department again reiterate what the Congress had explicitly, in our judgment, made clear in the 1996 act, and that remains the position of the Department of Justice.

REP. CANNON: I take it that you personally also believe, like I do, that the Department of Justice should continue to play its historical role -- that is, an active role -- in monitoring and prosecuting anti-competitive, exclusionary or monopolistic behavior in the telecommunications industry. And do you need any additional tools to pursue such violations that are occurring?

ATTY GEN. ASHCROFT: Well, the responsibility of the Justice Department is to carry out and effect the will of the Congress as expressed in the law. And it's pretty clear to me, as I read the law and I happen to have been a participant in policy-making instead of policy implementing aspect of government when the law was passed -- that that's the will of the Congress. And we will do our best to serve America well by safeguarding the competitive environment which you have described. I happen to think it's a good policy to have that kind of safeguard for competition.

REP. CANNON: Since we're considering this in the very near future, we'd appreciate any ideas that you might have about what kind of tools, what kind of clarification you would like to have from Congress.

General, during the campaign last year, then-candidate Bush spoke of reforming the use of secret service -- or secret evidence and addressing racial profiling. Now, Congressman Issa spoke to this a bit. But can you give us a bit of a status report on where the department is on those two issues?

ATTY GEN. ASHCROFT: Secret evidence is a matter of concern to this administration because it involves a very tender balance between the need to enforce the law and the rights of citizens -- rights of individuals who are standing before the law. And frankly, secret evidence has not been used during this administration, but this administration is eager to work with the members of this committee who are concerned about this question to reach an outcome which is satisfactory, that respects these counterbalanced objectives of the culture.

I've forgotten what the other part of the question --

REP. CANNON: Racial profiling.

ATTY GEN. ASHCROFT: Well, we're very active in conducting a federal study and would be very pleased to try and -- trying to put in place the kinds of things that would stop the federal government's utilization.

We want the right training, we want the right kind of discipline, we want the right kind of detection measures and the right kind of remediation measures, because racial profiling doesn't belong in the federal government's operational arsenal.

REP. SENSENBRENNER: The time of the gentleman has expired.

REP. CANNON: Yield back --

REP. SENSENBRENNER: The gentleman from New York, Mr. Weiner.

REP. ANTHONY WEINER (D-NY): Thank you, Mr. Chairman.

Mr. Attorney General, a couple of weeks ago I introduced a bill to reauthorize the COPS program for an additional six years, at \$1.15 billion a year. During your Senate term, you co-sponsored reauthorization of this bipartisan effort to keep the COPS program alive.

I appreciate your support of the COPS program, but I'll admit I'm concerned and a bit confused by your recent statements about the program. In the public record of your Senate confirmation hearing from January this year, you were asked by Senator Biden if the COPS office will receive strong commitment from the Bush administration. I'd like to read you a quote of your response, in the form of a written response to Senator Biden.

Quote, "President Bush has pledged to maintain the current level of funding for the COPS program but has also pledged to increase the flexibility of the program, so state and local authorities can determine where the money can best be spent," closed quote.

Are you disappointed that your boss broke this promise?

ATTY GEN. ASHCROFT: Well, I believe that the COPS program is funded so that no person on the program and provided as a part of the program is being deleted. It is important that when we start a program, we finish a program. And the program was designed, however, to give communities a three-year exposure to additional police resources and at the conclusion of that time allow individual communities to make a decision about whether to persist.

So that there -- the additional funding has now been moved into two areas, a more flexible area, giving localities a greater flexibility in the deployment of resources to meet their law enforcement needs, and secondly into an area that would emphasize the school security issues.

REP. WEINER: Mr. Attorney General, let me clarify the record. Under the Bush budget, the funding for COPS is reduced -- I repeat, is reduced -- from \$1.37 billion in FY 2001 to \$855 million a year, a \$182 million cut, despite the president's pledge that you brought to the United States Senate.

At the same time, the universal hiring program, which is the main COPS program for hiring new community police, is eliminated. How the elimination of the crux of the program increases flexibility is a mystery to me.

So while you're saying to state and local authorities they will have more flexibility to determine where COPS money will be spent, one place it isn't going to be spent is on cops. And that is the main objection.

In addition, the COPS MORE program, which provides funds to acquire technology and hire civilians, to free up cops from behind the desks and put them out on the street, has been stopped in the second year, after the second year of what was purported to be a three-year program --

another option, another area of flexibility that has been eliminated. As point of fact, President Bush not only didn't increase the funding, he reduced it; didn't increase flexibility, he eliminated flexibility. How do you respond to that, given the fact that you testified before the Senate that both things would not be true?

(Pause.)

ATTY GEN. ASHCROFT: My testimony to the Senate indicated what I thought would be the case, and I believe that the president has submitted a budget which is an acceptable budget that will allow communities to meet their law -- assist communities in meeting their law enforcement needs.

REP. WEINER: Attorney General, are you familiar with the Jonathan Pollard case? The case of -- Jonathan Pollard was someone who was convicted of spying on behalf of Israel.

He's serving a life sentence, despite the fact that a plea bargain had been struck saying that the Justice Department would not ask for a life sentence.

One of the reasons that sentence was imposed was Caspar Weinberger, the secretary of Defense at the time, introduced a memo at the last moment and he asked for a life sentence to be imposed. That memorandum is now important to the efforts of Mr. Pollard to grant a new hearing on his sentencing. The Department of Justice has refused to turn that over to the attorneys, or to me, for that matter. And that was, I think, a mistake in policy.

Would you agree to turn over the information so that Mr. Pollard's lawyers can pursue his rights under the law?

ATTY GEN. ASHCROFT: I'll be happy to confer with the department about reasons whether or not they should turn over the memo and what the legal policy is on it. I don't have the --

REP. WEINER: I appreciate that. Is there any reason -- if I can interrupt you. Is there any reason why I can't have a viewing of it?

ATTY GEN. ASHCROFT: I don't know.

REP. WEINER: Okay, if you could let me know about that as well.

Thank you, Mr. Chairman.

REP. CANNON: Mr. Chairman, I'd ask unanimous consent that immediately following my questions of the AG -- or the attorney general, that the amicus brief of the Department of Justice and the FCC, Intermedia versus Bell South be included in the record.

REP. SENSENBRENNER: Without objection, so ordered.

The gentleman from Virginia, Mr. Goodlatte.

REP. BOB GOODLATTE (R-VA): Thank you, Mr. Chairman.

General Ashcroft, welcome to the committee. We are delighted to have you here. We appreciate your taking all this time to address such a wide range of issues.

And I also want to thank you and commend you for your outreach to the Congress as a whole, something that you are particularly well- suited to do. But on two occasions I've had the opportunity to be in your office; one to individually speak with you at length on issues of concern to the committee and to myself; and the other occasion, a bipartisan meeting that you initiated, which not only, I think, helped to promote a dialogue between the executive branch and the Congress, but also helped to promote some discussion right here in the committee on -- I think we found some common ground on some issues that we may well be able to address. And I haven't seen that kind

of outreach during my time in the Congress, so I thank you.

I do have a couple of issues I'd like to ask you about. First, I was pleased to hear that you intend to enforce the obscenity laws already on the books. The failure of the previous administration to enforce those laws has led to a proliferation of obscenity both online and off. And I am particularly concerned about the safety of our children on the Internet where they're subjected to child pornography and solicitation in a massive way. And I'd like to know to what extent the Justice Department will use its resources to assist state and local enforcement in combatting this cyberattack on our nation's children?

ATTY GEN. ASHCROFT: I thank you for the question. I am concerned about obscenity and I'm concerned about obscenity as it relates to our children.

The electronic data transmission revolution has revolutionized certain kinds of criminal activity, and the technology involved in it makes it much more difficult for limited law enforcement agencies, like small county prosecutors and frequently local enforcement operations, to operate as effectively as they might otherwise if the digital universe were not involved.

We pride ourselves on cooperating to enforce laws with state and local authorities, but particularly in areas where the federal government has the kind of technology and technological awareness related to cybercrime and its many manifestations in different areas. We try to be especially accommodating to local law enforcement to assist them, and I would think that would be an objective of ours in this respect.

REP. GOODLATTE: Thank you, General Ashcroft.

The second question I have relates to online piracy, the theft and then either the sale or in any many cases the wholesale giving away of valuable copyrighted material on the Internet.

A few years ago, I introduced legislation which passed the Congress, was signed into law, called the NET Act, or No Electronic Theft Act, which gave the Justice Department considerably greater law enforcement tools to combat this serious growing problem of protecting valuable intellectual property on the Internet. And so far, there have been very little action. I think there have been just a handful of prosecutions in this area. And I wonder if the Justice Department and you could commit to a greater beefed-up effort to enforce that law and combat the multi-billion dollar theft of valuable intellectual property on the Internet.

ATTY GEN. ASHCROFT: Well, frankly, as you know, the NET Act assists the department by addressing a new form of crime, large-scale distribution of pirated software and copywritten (sic) materials over the Internet where the infringer does not act out of a pure profit motive.

Sometimes these infringers are just with a mischievous but malicious intent giving away the property of other people. And we are interested in making sure that we do what we can to curtail that. And we launched a joint intellectual property enforcement initiative in the department over a year ago, and I would expect that initiative to begin to bear fruit.

Uniquely, the United States of America is the source of much of the really valued intellectual property that is important around the world. And if it becomes available without cost as a result of privacy (sic) or without compensation to those who create it, we will simply destroy the capacity for this culture to generate and continue to be the generators of the leading edge in technology and information processing.

REP. GOODLATTE: Thank you, general.

Thank you, Mr. Chairman.

REP. SENSENBRENNER: The gentleman's time has expired.

On the subject of enforcement of the federal criminal obscenity statutes, at this point I would like to ask unanimous consent to insert into the record a letter which I wrote on February 15th to the attorney general relative to a report on this statute and the response dated May 3rd from Cheryl L. Walter (sp), acting assistant attorney general, to my letter. And without objection, they are included.

The gentleman from Massachusetts, Mr. Delahunt.

REP. WILLIAM D. DELAHUNT (D-MA): Welcome, general. And individual by the name of Emmanuel Constant headed a paramilitary group in Haiti called FRAPH in the early '90s. That group clearly was involved in numerous massacres and killings of civilians with the approval of the military government then in power. He has come -- he later came to the United States, where he still resides. And I don't know if you are familiar with this particular case, but he has been described as a gross violator of human rights.

Last year a Haitian court found him guilty of a particular massacre, and Haiti has requested his extradition. And according to news reports, the INS was ready to deport him. However, because of government intervention, he still is free here in the United States. Apparently he was a CIA asset. Are you familiar with this case? And if you are, could you clarify what the situation is for us?

ATTY GEN. ASHCROFT: I'm not familiar with this case.

REP. DELAHUNT: Fine. I'd like to -- at some point in time if you or a deputy could have a discussion with me on it, I and I know other members in Congress have a profound interest in this matter.

ATTY GEN. ASHCROFT: Well, may I just comment that extradition is very important. It's important to the United States. We are seeking to extradite people all the time. We need other nations to cooperate with us. And it seems to me that the last thing we would want to become is a refuge for people who had violated the rights of others in a barbaric way. And --

REP. DELAHUNT: Right. I respect that sentiment, Mr. Attorney General. And I also concur with your opening statement about public confidence in the integrity of the justice system. It is essential.

And I'm sure you're aware that much discussion today has focused on the application of the death penalty in terms of the federal judicial system. Well, the Supreme Court has indicated that there is a federal constitutional interest in the application of the death penalty in state courts. And I would suggest that we have a real crisis in confidence of the implementation of the death penalty in state courts.

There have been recent studies -- for example, there's a Columbia University study that indicates that 70 percent of the death penalty cases in the state courts contained serious, reversible error. A good conservative Republican from Illinois, Governor Ryan, because of what has occurred in Illinois, did impose a moratorium until he could thoroughly sort out what occurred in his particular jurisdiction.

Myself and Representative LaHood and about 200 members of Congress -- and I would suggest that this is a bipartisan effort -- have filed legislation which we feel would address this particular unacceptable situation, and it's called the Innocents Protection Act. I don't know whether you've had an opportunity to review it, but what it does do is that it mandates DNA testing in certain cases, and more importantly, incentivizes the states to provide adequate legal services to defendants. I would welcome a comment, if you have any.

ATTY GEN. ASHCROFT: Well, first of all, I commend you for caring about the accuracy of the judicial system. And I don't think there's anyone who will thoughtfully say that we shouldn't elevate the accuracy and integrity of the conclusions we reach. And I'm interested in trying to provide the leadership and capacity to do that across the system, and I commend those in the Congress who seek those objectives without commenting on the specifics of their legislation.

REP. DELAHUNT: I would like to work with you -- and I know I speak for other members -- with you in terms of drafting this legislation, because I really think it's important if the American are going to continue to have confidence in our justice system.

REP. SENSENBRENNER: The gentleman from Alabama, Mr. Bachus.

REP. SPENCER BACHUS (R-AL): Thank you, Mr. Chairman. Thank you, Attorney General Ashcroft.

First, I want to join with several other members who've complemented you on the breakfasts you've held, inviting members of both parties to sit down together with you and have a dialogue. And I think that is very helpful and something I find refreshing.

The University of California Berkeley uses SAT scores in their admissions process. Fire departments use physical strength tests, minimum physical strength tests to choose firefighters, because those firefighters must carry people from burning buildings. States like New Jersey have approved a site for a cement plant which happened to be in a minority community. The city of New York -- New York City wanted to increase their fares in their subway system and their bus system. The NCAA has established certain academic requirements for their athletes. All those practices or procedures have been attacked in court not because they discriminate or there was any intent to discriminate, but because they had a disparate impact or disproportional impact on a certain class of citizens.

There's been a recent decision I know you're aware of in the Supreme Court, the Sandoval decision, about disparate impact in which that issue was addressed. And my question to you is this: First of all, are you familiar with Attorney General Reno's order of July the 14th, 1994, dealing with disparate impact?

ATTY GEN. ASHCROFT: I can't say that I am.

REP. BACHUS: Okay. In that memorandum, she asked all heads of department and agencies to provide federal financial assistance to ensure that the disparate impact provisions are fully utilized. And she went on to say: "Where federal funding programs have disproportionate effects, those policies and practices must be eliminated unless they're shown to be necessary to the program's operation and there is no less discriminatory alternative."

The problem with that directive as I see it now is that it flies in the face of the Supreme Court's decision in the Sandoval case. So my question to you is, what will the Justice Department, in light of the Sandoval decision, what will be y'all's position on disparate impact cases?

ATTY GEN. ASHCROFT: Well, Congressman, I have to tell you that I'll have to look at the policy as expressed in the memo. Did you say June 14 or 19 --

REP. BACHUS: Of 1994.

ATTY GEN. ASHCROFT: -- '94 and review it in conjunction with the Supreme Court's decision. I wish I were conversant enough with both of those settings and I had the ability to detail for you the approach that I would take, but I would like to do that in a considered and measured fashion and get back to you.

REP. BACHUS: Sure. I appreciate that.

I have no further questions. Would you like to comment -- if you would wish to do it in a more reasoned and considered manner at a later time, I would respect that -- but would you comment on the Sandoval decision?

ATTY GEN. ASHCROFT: I think rather than to take a running leap at that here without having a

recent assessment of it, it would be better for me to restrain myself.

REP. BACHUS: Thank you.

I want to close just by saying that I have tremendous respect for you.

ATTY GEN. ASHCROFT: Thank you.

REP. BACHUS: I actually wish that -- as the gentleman from Massachusetts called you "Senator" Ashcroft, I wish we could continue to call you Senator Ashcroft. We might not have some of the problems that we have in the Senate.

REP. SENSENBRENNER: If the gentleman will yield, you know, once a senator always a senator.

REP. BACHUS: That's right. He's still a senator. I wish you were an active senator.

ATTY GEN. ASHCROFT: I suppose that would be true unless someone graduated to the House afterward, and then it would just be "Congressman." (Laughter.)

REP. SENSENBRENNER: And that would be a very wise person.

The gentlewoman from Texas, Ms. Jackson Lee.

REP. SHEILA JACKSON-LEE (D-TX): Thank you very much, Mr. Chairman.

And thank you, General Ashcroft. As you well know, I'm one of two members of this body that presented her views at your confirmation hearing. And I hope that you realize that the position was on principle, disagreement over a number of issues. But let me thank you for the quick response that I have secured or obtained on some issues of which I'm going to discuss today, in terms of you and your staff returning at least a call to give me further information.

And I believe that what we're doing today is both unique and important, providing a hearing so that we can, for the first time in 20 years, have an authorization bill, which I think is crucial. If there is ever a tool of democracy and justice in the United States, certainly one great aspect of it is the Department of Justice.

So I would like to raise some questions that are of great concern to me. Briefly, I'd like to say that you have heard a number of inquiries regarding the INS. It seems that the committee -- subcommittee I serve on is quite popular.

And what I would offer to say to you is that I believe the president in his campaigning really captured where I think we need to go. And I hope that you will review his remarks. And that is that we need two entities that are well financed, but we need a singular head or someone who will be responsible for the agency.

And I have met Mr. Zigler (sp), and I can't pretend to appoint him, but I believe he is a grounded individual that will give good leadership.

I hope that you will look at the legislation that I'm offering, H.R. 1562, Immigration and Accountability Restructuring Act, H.R. 1562 -- we'll provide your staff with it -- that analyzes the INS, provides the support for the law enforcement, but also recognizes the problems that so many members have talked about, which is denying the quick access to legalization for those who desire so.

The other aspect of the immigration work that I hope that you'll work with us on is this whole issue of unaccompanied immigrant children. We know of a very well-renowned story, and we won't focus on that; we'll focus on the thousands of children who come, and we have no basis of dealing with



them. I hope you'll look at my legislation on that, the Unaccompanied Immigrant Children Due Process Act of 2001. And I know that I can get a response back from your staff, so I'm not necessarily asking for one on that point.

Moving on, I would like to raise some issues that are of crucial concern to me, and I have some letters. I hope my comments do not diminish my respect for the men and women in blue, but police brutality is real. Racial profiling is real. I have a case in Harris County, with the Harris County Sheriff's Department, and I will give to you today the letters that are evidence of or, if you will, allegations of discriminatory practices. It's a case that came through the EEOC. There were allegations of African American deputies being referred to as "monkeys," a Confederate flag in the sheriff's parking lot, a lot of allegations. This came under the clock of the previous administration, but the Civil Rights section has it now. I need, we need expedited review of this, in order to help clean up a department that can afford to be cleaned up.

We have done in the Houston Police Department. We've had some tragedies recently. We've lost some deputies. And I offer my deepest sympathy.

But the issue is, for us to be able to respect law enforcement, we must have law enforcement that respects us. So I will ask for a response from that, but let me conclude on some other remarks.

Police brutality is the fact that Tommy Thomas in Cincinnati is dead and 15 black men were killed. Police brutality is the fact that Amadou Diallo as well was shot in New York. And I'd like to be able to hear from you, probably in writing, what you will be doing that matches racial profiling with the issue of police brutality. And I think that is very important.

I'm going to move on now to the Federal Bureau of Investigation because, as I said, these are questions that I hope will be answered.

The FBI. The Hanssen case, the Wen Ho Lee, and the McVeigh case -- I frankly believe, though I've been certainly a respecter of the FBI, that we have a problem. It is broken. The McVeigh case is definite and definitive results of whatever the problems were in their investigatory practices. I would like a status report of the -- excuse me -- inspector general's efforts, and I would like to hear as well from you, Mr. Attorney General, on your practices or your attempts to work on that issue.

REP. SENSENBRENNER: The time of the gentlewoman has expired.

REP. JACKSON-LEE: I will submit other questions in the record, and I thank you so very much. Sorry for the fact that it was a series of questions, but I thought it was important to get these issues on the record.

Thank you.

REP. SENSENBRENNER: Yeah. And let me remind the attorney general and the folks from Justice that he has brought with him that the responses should be directed to the committee for inclusion in the record.

And finally, last, and certainly not least, the gentleman from North Carolina, Mr. Watt.

REP. MELVIN WATT (D-NC): Thank you, Mr. Chairman.

And thank the attorney general for being with us this afternoon, and also thank him for his hospitality when we had the occasion to visit him in his office for the breakfast meeting that we had there, and for his comments, particularly about sporting events.

So I want to join my colleagues on the other side in complimenting the quality of the staff members that you got from the Judiciary Committee.

ATTY GEN. ASHCROFT: (Chuckles.)

REP. WATT: I know all of them are fine lawyers.

But I also want to express some concern that justice and the appearance of justice can often be impacted by the appearance of diversity. And I notice behind you you've got a lot of staff people, certainly good gender diversity. I'm wondering how you're coming on the other kinds of diversity, racial diversity in particular? What progress are you making on putting together your staff in a racially diverse way?

ATTY GEN. ASHCROFT: Well, I thank you for that question. I feel honored that so many individuals of outstanding talent have agreed to join me in my administration. And I'm grateful that the Senate of the United States has recently confirmed Larry Thompson to be the deputy attorney general.

REP. WATT: Has he started?

ATTY GEN. ASHCROFT: He has started. He is on the job. And rather than sit behind me, he's running the department while I'm here.

REP. WATT: That's good.

ATTY GEN. ASHCROFT: Charles James, another African-American, is slated to be the head of the Civil -- pardon me; the Antitrust Division.

REP. WATT: Without asking you to go through every one of them, maybe we could just get some profile information submitted to the committee for the record, otherwise --

ATTY GEN. ASHCROFT: Well, I just -- I think we will have the most diverse Justice Department, including its leadership --

REP. WATT: Okay.

ATTY GEN. ASHCROFT: -- that has ever visited the Justice Department. And frankly, I don't particularly like to characterize it that way. I like to characterize it as the most talented.

REP. WATT: Well, I --

ATTY GEN. ASHCROFT: These are individuals of outstanding --

REP. WATT: Those things are not mutually exclusive, and I certainly agree with you.

When we met recently, I expressed to you some concerns about the charitable choice provisions, and one of the concerns I expressed about legislation was the prospect of mixing government money and church funds, and the prospect of allowing proselytization, and my concern that somewhere down the road there will be an onset of indictments about the use of federal funds in some of these programs.

If you find that there is overt proselytizing going on, do you think it would be difficult to divide the religious and the secular in evaluating the prospect of prosecuting somebody for improper use of federal funds in these faith-based initiatives as they are being proposed?

ATTY. GEN. ASHCROFT: I want to say I believe that this is an important issue, and it's one that was very carefully considered when this legislation was crafted; carefully debated. And there are some groups whose evangelization efforts are so intertwined with any remedial efforts that they would probably be ineligible to use or participate in the faith-based operation. The safeguards of the law are such that it requires that --

REP. WATT: Could you prosecute -- would you prosecute those people if they improperly use

federal funds?

ATTY. GEN. ASHCROFT: We would take whatever actions were appropriate to restore to the federal government, and to secure for the federal government, compliance with the law.

REP. SENSENBRENNER: The time of the gentleman has expired.

REP. WATT: Thank you, Mr. Chairman.

REP. SENSENBRENNER: Mr. Attorney General, after three hours, it's over. Let me thank you on behalf of the committee. I have been on this committee for over 22 years. I have seen a large number of attorneys general come and go, but none of them have been before this committee for as long a period of time and discussing as substantive a response as you have, and I think the committee wants to thank you for that. And this certainly has been a much different testimony than previous attorney generals have conducted, in both Democratic and Republican administrations.

Let me point out that, by my count, there are 28 members of the committee that asked you questions. You didn't have any preparation on what was on our mind. This was probably worse than appearing on Regis Philbin's show, on "Who Wants To Be A Millionaire?" because nobody knows what he is going to ask, and you really weren't able to call up and get a lifeline in case you were stumped on them. So I think that this has been very useful in terms of our being able to put together an authorization bill, to give advice of perhaps a little bit more powerful nature to the appropriators than they have gotten before.

Now, I have one further question, Mr. Attorney General. Was this as bad as you feared?  
(Laughter.)

ATTY. GEN. ASHCROFT: Well, I think this is constructive, and I want to thank the committee. I will be very honest. This is not the kind of day that you say, Oh, boy, I get to go and answer questions -- (laughter) -- for three hours. Anybody who comes here and tells you that will lie to you about other things.

But I think the -- I have a deep respect for the Congress of the United States. And it establishes the policy which is to be carried out; it establishes it in conjunction with the president.

And I think a good interchange is important. I hope that it's important for you to hear my responses, and I know it's very important for me to hear your concerns. And I hear them very clearly when I sit here in this position, maybe even more clearly than when I hear about them when I'm down in the Justice Department.

So I think this is very valuable for what I learn, and I hope that it's a way that we can promote our ability to speak with each other. And I certainly want to make my responses, both in content and in character, responses that promote communication which will provide a basis upon which we can elevate the level of service that we accord to the American people, because we're in the service industry of making sure that the American people are served and that their freedoms are guarded.

REP. SENSENBRENNER: And we feel the same way.

And there being no further business before the committee, the committee stands adjourned.

END

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